Supreme Court of the United States

(OCTOBER TERM, 1951)

No. 301

THE PALMER OIL CORPORATION, PAUL STERBA and PAUL STERBA, JR., a minor, etc.,
Appellants,
VERSUS
AMERADA PETROLEUM CORPORATION, ET AL.,
Appellees.

No. 302

KIT C. FARWELL, FRANK PHOHLEMANN, L. A. DAVIS, ET AL.,
Appellants,
VERSUS
AMERADA PETROLEUM CORPORATION, ET AL.,
Appellees.

BRIEF OF APPELLEES

HARRY D. PAGE,
BOOTH KELLOUGH,
Tulsa, Oklahoma,
Attorneys for Amerada Petroleum Corporation.

W. H. BROWN,
Oklahoma City, Oklahoma,
Attorney for Anderson-Prichard Oil Corporation.

GENTRY LEE,
F. H. BACON,
R. O. MASON,
Bartlesville, Oklahoma,
Attorneys for Cities Service Oil Company.

VILLARD MARTIN,
Tulsa, Oklahoma,
Attorney for Foster Petroleum Corporation.

ARCHIE D. GRAY,
WILLIAM C. LIEDTKE,
JAMES B. DIGGS, JR.,
Tulsa, Oklahoma,
Attorneys for Gulf Oil Corporation.

EARL A. BROWN,
Dallas, Texas,
ROBERT W. RICHARDS,
Oklahoma City, Oklahoma,
Attorneys for Magnolia Petroleum Company.

RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
Bartlesville, Oklahoma,
Attorneys for Phillips Petroleum Company.

V. P. CROWE,
Oklahoma City, Oklahoma,
Attorney for Stephens Petroleum Company, and Ray Stephens, Inc.

M. DARWIN KIRK,
Tulsa, Oklahoma,
Attorney for Sunray Oil Corporation.

FLOYD GREEN,
FERRILL H. ROGERS,
Oklahoma City, Oklahoma,
Attorneys for Corporation Commission of Oklahoma.

UTTERBACK TYPESETTING CO., 3 SOUTH WALKER, OKLAHOMA CITY, PH. 3-8750

INDEX

INDEX CONTINUED PAGE

INDEX CONTINUED PAGE

Authorities Cited

Cases:

INDEX CONTINUED PAGE

INDEX CONTINUED

INDEX CONTINUED PAGE

INDEX CONTINUED PAGE

STATUTES:

INDEX CONTINUED PAGE

MISCELLANEOUS:

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STATEMENT

Involved herein is the validity of House Bill 339 of the 1945 Oklahoma Legislature[1] providing for the unitized operation and further development of separately owned

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1. Sections 286.1-286.17, Title 52, O. S. Supp. 1949, the more important substantive provisions of which are set out in the Statement that follows.

tracts within a common source of supply of oil and gas and of Order No. 20289 of the Oklahoma Corporation Commission dated September 5, 1947 (R. 1239) so unitizing the West Cement Medrano common source of supply in Caddo County, Oklahoma.

The Supreme Court of Oklahoma in the judgment from which these cases are appealed, March 20, 1951, not yet officially reported in the Oklahoma Reports, 231 P.2d 997 (R. 28-56), has sustained the validity of the law and order and determined that the order was amply supported by the evidence. The appellants attack the correctness of such judgment and the validity of the law and order. Appellees appear in support thereof.

Facts Giving Rise to Statute

It has long been recognized by the oil and gas industry, the oil and gas regulatory agencies of the several states, the several boards and agencies empowered by the federal government to investigate the matter, the Interstate Oil Compact Commission, the courts, and other persons and agencies familiar therewith that an oil and gas reservoir, pool or common source of supply, as it is variously called, is inherently a physical unit and should be developed and operated as such; that what is done in one part of the reservoir directly affects other parts thereof; that the primary force resulting in the recovery of oil is the presence under pressure of either gas or water, or both, associated with the oil, known as reservoir energy, which, when a pressure differential is created due to the opening

of a well, expands or otherwise drives the oil to the well bore where it can be produced; that the reservoir energy is common to the reservoir as a whole and, as was said by the Oklahoma Supreme Court in the case of *Russell* v. *Walker* (1932), 160 Okla. 145, 15 P.2d 114, 117, "is owned in common by the owners of the common source of supply"; that once the pressure or reservoir energy is depleted, production ceases; that by dividing the reservoir into a large number of small tracts and operating each such tract as a separate unit, using the best known methods of operation possible under such conditions, results in the wasteful use and dissipation of the reservoir energy and, as a rule, results in the recovery of not to exceed 20 to 25 per cent of the oil in the reservoir, leaving unrecovered, and in most instances unrecoverable, as much as 75 to 80 per cent; that by treating and operating the reservoir as a single indivisible unit whereby a full and proper use can be made of the natural reservoir energy and pressure maintenance or repressuring operations can be carried on through the return of gas or water to the reservoir, from twice to three times as much oil can be recovered than can otherwise be recovered; that the maximum efficiency, waste prevention and conservation generally can only be obtained where the reservoir is treated and operated as a unit.[2]

Although there are many pools or parts of pools in the United States today which, by agreement, have been unitized and are being successfully operated as units, progress in this regard has been hampered and the unitization of many other pools blocked because of divided owner-

ship and the failure or refusal of a minority owner or owners, for selfish or other reasons, to so agree.[2]

Statute Involved

In order to make possible the unitized operation of oil reserves in the State of Oklahoma, the Oklahoma Legislature in 1945 enacted House Bill 339, providing a means and procedure therefor. The object of the legislation is stated in Section 1 thereof, as follows:

> "The Legislature finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation and further development of the oil and gas properties to which this Act is applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights, protected."

Although set out in full at pages 111-125 of the printed Statement As to Jurisdiction of appellant, The Palmer Oil Corporation, and as an appendix to said appellant's brief, a brief summary of the Act and a quotation of the more important substantive provisions will, we think, here prove helpful to a better understanding of the case.

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2. See bibliography of source materials, including court decisions, attached hereto as Appendix "A". For a clearly stated informative, up-to-date discussion of the engineering and operating facts requiring the unitized operation of oil and gas pools, we invite the court to, in particular, read the book entitled **Oil and Gas Production: An Introductory Guide to Production Techniques and Conservation Methods,** compiled by the Engineering Committee of the Interstate Oil Compact Commission, published by the University of Oklahoma Press, Norman, Oklahoma, March, 1951.

Section 2 defines and limits the common sources of supply to which the Act is applicable.

Section 3 vests the Oklahoma Corporation Commission, the body having general supervision over oil and gas conservation in the state,[3] with authority to administer the Act.

Sections 4 and 5 read as follows:

"Section 4. If upon the filing of a petition therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided, the Commission shall find (a) that the unitized management, operation and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply; and (b) that one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; and (c) that the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (d) that such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights

3. Sections 81-279, 291-303, Title 52, O. S. 1951.

within the common source of supply or portion thereof directly affected, it shall make a finding to that effect and enter an order approving the creation of a unit composed of the lessees and other persons who under the plan of unitization approved by the Commission are chargeable with the responsibility and cost of conducting such unitized methods of operation, development of the common source of supply or portion thereof described in the order, all upon such terms and conditions, as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants and others, as well as the lessees. To give the Commission jurisdiction hereunder, the petition shall be filed by, or with the authority of, lessees of record of fifty percent (50%) or more of the area of the common source of supply or portion thereof sought to be unitized. The petition shall set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the Commission as hereinabove provided and shall have attached thereto a recommended plan of unitization applicable to such proposed unit area and which the petitioners consider to be fair, reasonable and equitable.

"Section 5. The order of the Commission shall define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

"Each unit and unit area shall be limited to all or a portion of a single common source of supply. Only

so much of a common source of supply as has reasonably been defined by actual drilling operations may be so included within the unit area.

"A unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created, and that the conduct thereof will have no material adverse effect upon the remainder of such common source of supply.

"The plan of unitization for each such unit and unit area shall be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions and requirements found by the Commission to be reasonably necessary or proper to effectuate or accomplish the purpose of this Act, and subject to the further requirements thereof, each such plan of unitization as the parties hereto may agree upon shall be fair, reasonable and equitable, and among other proper and equitable provisions, shall provide:

"(a) For the efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the common source of supply affected. Under such a plan the actual operations within the unit area may be carried on in whole or in part by the several lessees of leases within the unit area, subject to the supervision and direction of the unit, or may be conducted in whole or in part by the unit or some particular operator or operators of a lease or leases in the approved unit area dependent upon what is most

beneficial or expedient. The designation of the operator shall be by vote of the lessees in the unit in a manner provided in the plan of unitization and not by the Commission.

"(b) The division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately-owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately-owned tracts to produce or receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof. A separately-owned tract's fair, equitable, and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, or operator factors, as may be reasonably susceptible of determination. Unit production as that term is used in this Act shall mean and include all oil and gas produced from a unit area from and after the effective date of the order of the Commission approving the creation of the unit regardless of the well or tract within the unit area from which the same is produced;

"(c) The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts

and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and rate of interest as may be fair to all concerned, reasonable provisions shall be made in the plan of unitization for carrying or otherwise financing lessees who are unable to meet their financial obligations in connection with the unit.

"(d) The procedure and basis upon which wells, equipment and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in that project as of the effective date of unit operations.

"(e) For the creation of an operating committee to have general over-all management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards or officers to function under authority of the operating committee as may be necessary, proper or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards or officers and prescribing their tenure and time and method for their selection. Each lessee within the unit area shall be entitled to representation on the operating committee and shall have a vote equal to the proportionate interest of such lessee in the unit, provided, where the voting interest of a lessee is such as to control the action taken by the committee, the vote of such lessee shall not serve to carry or defeat action by the committee unless such vote is supported by the vote of a majority of the remaining lessees.

"(f) The time when the plan of unitization shall become and be effective;

"(g) The time when and conditions under which and the method by which the unit shall or may be dissolved and its affairs wound up."

Section 6 provides that if at any time after the filing of the petition and within sixty days after the entry of the order creating the unit, lessees of record of 15 per cent or more of the area affected file written protests, the proceeding shall be dismissed.

Section 6, together with the provisions of the next to the last sentence of Section 4, makes as a legislative condition to the creation of a unit under the Act the approval or acquiescence of lessees of record of not less than 85 per cent of the area affected. If, however, as pointed out in the argument to follow, a unit is to be created, it is the Corporation Commission under the requirements of the law, after notice and hearing and subject to the right of review on appeal, that fixes and prescribes the terms, provisions and conditions of the plan of unitization applicable thereto and not the petitioners or any percentage of the lessees.

Section 7 provides for a full and direct appeal from an order made by the Corporation Commission under the Act by "any person aggrieved" thereby to the Supreme Court of Oklahoma in the same manner that appeals from other orders pertaining to oil and gas conservation are taken. The authority of the Supreme Court on appeal is stated as follows:

"The Supreme Court on appeal shall have jurisdiction and authority and it shall be its duty to review the record of proceedings and transcript of evidence and to consider the validity of the order of the Commission appealed therefrom. On appeal the order of the Commission appealed from shall be regarded as *prima facie* valid, fair, reasonable and equitable, but if the order is found to be contrary to the clear weight of the evidence, in any one of such respects, the same shall be vacated and set aside and the cause referred to the Commission for further proceedings not inconsistent with the judgment of the court; otherwise the said order shall be affirmed."

Section 7 further provides that, in addition to any other remedy provided in the Act, any interested person, firm or corporation within the unit area feeling himself aggrieved by any order of the Corporation Commission or the action of a unit thereunder may at any time institute a suit in the District Court of the county in which the greater part of the unit area is located and in such suit have his rights determined, coupled with the right of appeal to the State Supreme Court from the action of the District Court.

Section 8 makes operations in violation of the plan of unitization prescribed by the Commission unlawful.

Sections 9 and 10 are as follows:

"Section 9. Each unit created under the provisions of this Act shall be a body politic and corporate, capable of suing, being sued and contracting as such in its own name. Each such unit shall be authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit

to the unit, to supervise, manage and conduct the further development and operations for the production of oil and gas from the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of this Act and by the plan of unitization.

"The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately-owned tracts for the payment of unit expense shall at all times be several and not joint or collective and in no event shall a lessee or other owner of the oil and gas rights in the separately-owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed or otherwise charged to his interest in such separately-owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for in this Act.

"Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the leasehold interest only in the unitized common source of supply (exclusive of a one-eighth (1/8) royalty interest) in and to each separately-owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately-owned tract. The interest of the lessee or other persons who by lease, contract or otherwise are obligated or responsible for the cost and expense of developing and operating a separately-owned tract for oil and gas in the absence of unitization shall, however, be primarily responsible for and charged with any assessment for unit expense made against such tract and resort may be had to overriding royalties, oil and gas payments, roy-

alty interests in excess of a one-eighth (⅛) of the production, or other interests which otherwise are not chargeable with such cost, only in the event the owner of the interest primarily responsible fails to pay such assessment or the production to the credit thereof is insufficient for that purpose. In the event the owner of any royalty interest, overriding royalty, oil and gas payment or other interest which under the plan of unitization is not primarily responsible therefor pays in whole or in part the amount of an assessment for unit expense for the purpose of protecting such interest, or the amount of the assessment in whole or in part is deducted from the unit production to the credit of such interest, the owner thereof shall to the extent of such payment or deduction be subrogated to all of the rights of the unit with respect to the interest or interests primarily responsible for such assessment. A one-eighth (⅛) part of the unit production allocated to each separately-owned tract shall in all events be regarded as royalty to be distributed to and among, or the proceeds thereof paid to, the royalty owners free and clear of all unit expense and free of any lien therefor.

"Section 10. Property rights, leases and other contracts, and all rights and obligations shall meet the provisions and requirements of this Act and to any valid and applicable plan of unitization or order of the Commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

"Nothing contained in this Act shall be construed to require a transfer to or vesting in the unit of title to the separately-owned tracts or leases thereon within the unit area, other than the right to use and operate the same to the extent set out in the plan of unitization; nor shall the unit be regarded as owning the unit production. The unit production and the pro-

ceeds from the sale thereof shall be owned by the several persons to whom the same is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold or possess shall not be acquired, held or possessed by the unit for its own account but shall be so acquired, held and possessed by the unit for the account and as agent of the several lessees and shall be the property of such lessees as their interests may appear under the plan of unitization, subject, however, to the right of the unit to the possession, management, use or disposal of the same in the proper conduct of its affairs, and subject to any lien the unit may have thereon to secure the payment of unit expense.

"The amount of the unit production allocated to each separately-owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately-owned tract, shall for all intents, uses, and purposes be regarded and considered as production from such separately-owned tract, and, except as may be otherwise authorized in this Act, or in the plan of unitization approved by the Commission, shall be distributed among or the proceeds thereof paid to the several persons entitled to share in the production for such separately-owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production or proceeds thereof from such separately-owned tract had not said unit been organized, and with the same legal force and effect. If adequate provisions are made for the receipt thereof, the share of the unit production allocated to each separately-owned tract shall be delivered in kind to

the persons entitled thereto by virtue of ownership of oil and gas rights therein or by purchase from such owners subject to the right of the unit to withhold and sell the same in payment of unit expense pursuant to the plan of unitization, and subject further to the call of the unit on such portions of the gas for operating purposes as may be provided in the plan of unitization.

"Operations carried on under and in accordance with the plan of unitization shall be regarded and considered as a fulfillment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area, or other contracts pertaining to the development thereof, insofar as said leases or other contracts may relate to the common source of supply or portion thereof included in the unit area. Wells drilled or operated on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately-owned tract within such unit area."

Section 11 makes provision for the subsequent amendment of a plan of unitization.

Section 12 provides for the enlargement of units.

Section 13 relates to the inclusion of public lands within a unit.

Section 14 provides that a unit as such shall have no income but that instead, all receipts shall be the income of the several persons to whom or to whose credit the same are payable under the plan of unitization.

Section 15 defines certain terms used in the Act.

Section 16 is a severability clause to the effect that if any sentence, clause, etc., be held invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not affect the remaining provisions of the Act.

Section 17 provides that agreements among lessees or other owners of oil and gas rights entered into with the view of bringing about the unitized development and operation of such rights shall not be violative of the antitrust laws.

Findings and Order in Respect to West Cement Medrano Common Source of Supply of Oil

Pursuant to the provisions of House Bill 339, *supra*, lessees of more than 50 per cent of the West Cement Medrano common source of supply of oil in Caddo County, Oklahoma, on October 22, 1946, filed a petition (R. 173) in Cause CD No. 1308 with the Oklahoma Corporation Commission for an order creating the West Cement Medrano Unit and prescribing the applicable Plan of Unitization for the purpose of the unitized management, operation and further development of said common source of supply of oil, alleging the facts required to be alleged by said unitization law. Commencing on December 9, 1946 (R. 201), and continuing with twenty-four days of testimony extending over a period of eight months (R. 201-1237), the Corporation Commission heard the testimony of every person who desired to be heard, either in full or in opposition to the petition, including all of the appellants and appellees in this Court, and on September 5, 1947, en-

tered its Order No. 20289 (R. 1239) creating the West Cement Medrano Unit, defining the Unit Area thereof and prescribing the Plan of Unitization applicable thereto.

The Commission, in respect to the West Cement Medrano Pool unitized by its order, found that such pool was a single common source of supply of oil and gas (R. 1243) embracing approximately 3,700 acres of land (R. 1244); that said source of supply consisted of a gas cap along the high part of the producing formation, from which primary production was gas, whereas the primary production from wells lower on the structure was oil; that all parts of the common source of supply are permeably connected so as to permit the migration of oil or gas, or both, from one portion of the common source of supply to another wherever and whenever pressure differentials are created as a result of the production or operations for the production of oil or gas from the producing formations (R. 1243); that the lands embraced within the Unit Area are divided into a large number of individual tracts of varying size and shape and owned in severalty by a large number of different individuals, firms and corporations owning varying interests therein, including not less than 25 different lessees and several hundred royalty owners (R. 1244).

In respect to the waste and inequities resulting from nonunitized operations and the increased recovery and benefits resulting from unit operations, the Commission, in Paragraphs 6, 7, 8 and 9 of its Findings of Fact (R. 1245-1247), found as follows:

"6. That without the unitization of said West Cement Medrano common source of supply of oil and gas the only method whereby said pool can be feasibly and effectively operated and produced for the recovery of oil and gas therefrom is by and under individual competitive pressure depletion methods of operation, the methods now being used in the pool, that is to say, by treating each separately owned tract or lease as a separate unit for operating and production purposes and depending on the natural energy in the producing formation to move what oil and gas can be moved thereby out of the formation to the well bore where it can be produced; that the principal natural energy mechanism in said pool is gas in solution with the oil coupled with a gas cap expansion; that under present competitive methods of operation, treating each tract or lease as a separate operating unit, there has been and still continues to be a disproportionate, inequitable and wasteful utilization and dissipation of the gas energy in the pool by certain tracts to the detriment and disadvantage of other tracts and to the injury of the pool as a whole; that by and under the best known competitive pressure depletion methods of operation not more than 25% or approximately 24 million barrels of the 97 million barrels of oil originally in place in the reservoir can be economically recovered, leaving the remaining 75%, or approximately 73 million barrels of oil in the ground unrecovered and *un*recoverable except through and by means of unitization of the pool and the adoption of unitized methods of operation therein; that to permit the owners of gas wells and high gas-oil ratio wells to continue to produce such wells will result in robbing the oil wells of gas energy required to produce the oil; that to shut in the gas wells and the high gas-oil ratio wells without permitting the owners thereof to share in the oil and gas production from

the oil wells, would deprive the owners of the gas wells of their fair share of the production from the pool; that the value of the recoverable oil exceeds many times the market value of the gas; that the return to the reservoir of the gas produced from the oil to supplement the remaining natural gas energy and retard the decline in reservoir pressure and perhaps the injection at some later date of water low on structure is desirable and necessary to obtain the greatest ultimate recovery of oil from the pool, but which cannot be done in the absence of unitization because of the migratory nature of the injected gas or water and the effect that the injection thereof into the reservoir would have upon properties in the pool other than the property on which the gas or water is injected and upon the pool as a whole.

"7. That by and through the unitization of the proposed Unit Area and the unitized management and operation and further development thereof as a unit, all as set out and provided for in the Plan of Unitization hereto attached, full use can be made of the gas energy in the reservoir to the mutual advantage of all the owners of the said common source of supply of oil and gas, that waste of large volumes of oil and gas can be prevented, gas can and will be returned to the reservoir to supplement the natural reservoir energy, water encroachment, either natural or artificial, on the lower side of the pool can be properly controlled and utilized, substantially more oil, amounting to many millions of barrels, can be recovered from the common source of supply than can be otherwise recovered, a more equitable distribution of the recoverable oil and gas can be had as between the several owners of the pool and the correlative rights of the several owners can be more fully protected.

"8. The unitization and unitized management and operation and further development of said common source of supply as a unit is reasonably necessary to effectively carry on the unitized methods of operation described in the proposed Plan of Unitization.

"9. That any one or all of the unitized methods of operation described in the attached Plan of Unitization as applied to the common source of supply underlying and included within the Unit Area are feasible, will prevent waste, and will, with reasonable probability, result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; that the estimated additional cost of conducting such operations will not exceed the value of the additional oil and gas so recovered; that such unitization and the adoption of any one or more of such unitized methods of operation is for the common good and will result in the general advantage to the owners of the oil and gas rights in and to the common source of supply thereby affected."

In respect to the Plan of Unitization attached to and made a part of the order and which by the terms of the unitization statute and of the order governs the operation of the Unit, the Commission (R. 1247-1248) found:

"11. That the Plan of Unitization attached to this order and which is made a part hereof, is one suited to the needs and requirements of the West Cement Medrano Unit, the creation of which is hereby authorized and approved, taking into account all the facts and conditions found by the Commission to exist in respect thereto; that said Plan of Unitization is fair, reasonable and equitable and contains all the terms, provisions, conditions and requirements reasonably

necessary and proper to protect, safeguard and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalty interests, oil and gas payments, carried interests, mortgages, lien claimants, and others, as well as the lessees and such as will effectuate and accomplish the purposes of H. B. 339 of the 1945 Oklahoma Legislature; that said plan of unitization provides for the efficient unitized management and control of the further development and operation of the Unit Area for the recovery of oil and gas from the common source of supply affected; that the division of interests set forth in 'Exhibit B' attached to said Plan of Unitization pursuant to which the unit production is to be apportioned and allocated among and to the several separately owned tracts within the Unit Area is fair and equitable and is such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof; that the division of interest assigned to the several separately owned tracts in the Unit Area as set out in said 'Exhibit B' to said Plan of Unitization is fair and reasonably representative of the value of said several tracts for oil and gas purposes and the contributing value thereof to the unit in relation to like values of other tracts in the unit; that the basis used to arrive at said division of interest takes into account the acreage of the several separately owned tracts, the quantity of oil and gas recoverable therefrom, the location thereof on structure, the probable productivity of oil and gas from such tracts in the absence of unitization, the burden of operation to which such tracts will or are likely to be subjected, together with all other pertinent engineering, geological and operating factors as are reasonably sus-

ceptible of determination; that the manner in which and the basis, terms and conditions on which the cost and expense of the further development and operation of the Unit Area shall be financed and apportioned among and assessed against the tracts and interests chargeable therewith are fair, reasonable and equitable; that the provisions of the said Plan with respect to taking over and using the wells, equipment and other properties of the several lessees within the Unit Area, including the method of arriving at the compensation therefor and otherwise proportionately equalizing and adjusting the investment of the several lessees in the project as of the effective date of the unit operations are fair, reasonable and equitable; that the provisions of said Plan with respect to the creation of an operating committee and the powers and duties of such committee are fair, reasonable and equitable.

"12. That the Plan of Unitization hereto attached in all respects conforms to and complies with the requirements of H. B. 339 of the 1945 Oklahoma Legislature."

Attached to and made a part of the order was the Plan of Unitization prescribed by the Commission (R. 1250-1303),[4] which in great detail defined the Unit, its Unit Area, the powers and duties of the Unit, the effect of unitization, how the production was to be allocated, the powers of an Operating Committee consisting of a representative of each lessee, the time when the Unit shall become effective, the manner of selection and powers of a Unit Operator, the method of payment and of apportionment of the cost and expense of the project, the man-

4. Also attached as Appendix "C" to brief of appellants, The Palmer Oil Corporation, et al.

ner of initially adjusting the investment of the several lessees, the general plan of operation, and all other matters material to the unitized operation of the pool and the rights and obligations of all parties in respect thereto, found by the Commission to comply in all respects with the requirements of the unitization law (R. 1248).

The Commission further found that at the time of the making of its order the Plan of Unitization so prescribed by it had been signed by lessees of record and of approximately 94 per cent of the area of the common source of supply and that the lessees appearing at the hearing and protesting the granting of the petition were lessees of approximately 4 per cent thereof (R. 1244-1245).

Evidence in Support of Order

Contrary to the statements of appellants, every finding required to be made by the statute and every finding by the Commission in its order is amply sustained by an abundance of evidence. The evidence in the case occupies approximately 1036 pages of the printed record, beginning at page 201 and continuing through page 1237, plus 116 exhibits. The Commission, in respect to the evidence, in its order said (R. 1241):

> "At the hearing everyone who desired to do so, regardless of the interest of such person, was given full opportunity to offer any and all competent evidence that any such person chose to offer, either for or against the recommended plan of unitization or by way of amendment thereto, and to otherwise be heard in regard thereto. The evidence so introduced

consisted of extensive geological, engineering and other proof concerning the history, development, discovery, operation and present condition of the West Cement Medrano field and the probable results obtainable both under present competitive methods of operation and through the unitization thereof; proof both pro and con as to the fairness, reasonableness and equitableness of the recommended Plan of Unitization; and proof by protestants with respect to certain amendments which they claim should be made in said Plan.

"In addition to the knowledge gained from the evidence introduced at said hearing, the Commission has had, over a period of time, a general knowledge of the West Cement Medrano field and of conditions existing therein gained through the exercise by it of its jurisdiction over such field under the Conservation Laws of the State of Oklahoma, dating from the discovery thereof. As a result of the evidence, statements and arguments introduced and made in the hearing here under consideration, and by reason of its general knowledge of said West Cement Medrano field, as aforesaid, the Commission is of the opinion that it has sufficient knowledge and information upon which to base a proper order in this cause."

The Supreme Court of Oklahoma, which under the statute was required to and did review the evidence, found the same to be sufficient.

To avoid repetition, appellees do not here detail the evidence but refer the court to Point IV of the argument wherein reference is made to the evidence sustaining the parts of the order which appellants assert are not supported by the evidence.

The most that appellants can say is that in certain respects there was a conflict of evidence. The Corporation Commission of Oklahoma, the duly constituted and well qualified governmental body charged by the state with hearing the evidence and determining the facts, resolved this conflict in favor of the findings and order in this case.

Action Taken Pursuant to Order

Although not appearing in the record in this case because of their occurrence subsequent to the completion of the record and proceedings before the Commission, the following are pertinent facts which are matters of record known to the parties in interest and concerning which there can be no dispute.

Pursuant to the order of the Commission, the West Cement Medrano Unit created thereby on December 1, 1947, took over the operation of the West Cement Medrano Pool as a single unit and has since continued to operate the same as such. In compliance with the order the Unit has installed gas gathering, compression and injection facilities at a cost in excess of one million dollars and has returned all produced gas the reservoir. In addition, it has drilled five additional oil production wells strategically located along the lower flank of the oil producing portion of the field. Two additional wells have yet to be drilled.

At the time the Unit took over the operation of the pool, the pool was producing approximately 4,600 barrels of oil per day. Today, after four years and four months of unit operation, the field is still producing an average of

4,500 barrels of oil per day, having in the meantime produced 6,460,000 barrels of oil over and above what had been produced at the time the pool was unitized. From the time that oil was first discovered in the pool in March, 1943, to the date of unitization on December 1, 1947, the pool by nonunitized methods of production only produced approximately 11,000 barrels of oil per pound of reservoir pressure drop. Subsequent to unitization the pool has produced 43,000 barrels of oil per pound of reservoir pressure drop. Before unitization, the pool had produced about 60 per cent of the gas in the reservoir with only 6.7 per cent of the oil initially in place (R. 246). Since unitization the pool has produced approximately the same percentage of the oil in place with only 3.6 per cent of the gas. Considering the vital importance of reservoir pressure and the efficient use of the gas energy to the production of oil, the increased recovery of oil per pound of pressure drop and the reduced ratio between produced gas and oil recovery clearly evidences the success of the project. No gas is being blown to the air but, except for that used as fuel, is all being returned to the reservoir. At such time as the maximum oil recovery is obtained, a large portion of the gas so returned to the reservoir and utilized as reservoir energy will be available for sale or light, heat and power purposes for the benefit of all concerned.

Proceedings on Appeal

In due time after the entry by the Corporation Commission of its unitization order, the appellants in this court lodged their appeals in the Supreme Court of Okla-

homa (R. 146-167), as authorized by the unitization law. In addition, The Palmer Oil Corporation, Paul Sterba and Paul Sterba, Jr., appellants in this court, filed an original proceeding in the Supreme Court of Oklahoma seeking a writ of prohibition against the enforcement of the unitization order by the Corporation Commission (R. 1-14). The appeals and the original action for prohibition were consolidated in such court (R. 16) and there fully briefed, argued and considered by the Supreme Court of Oklahoma in respect to all of the matters raised on appeal to this court. The Supreme Court of Oklahoma on March 20, 1951, handed down its opinion and decision in the consolidated cases, sustaining the Oklahoma unitization law and the order of the Commission relating to the West Cement Medrano Pool made pursuant thereto and finding that said order was fully sustained by the evidence (R. 28-56). Petition for rehearing was thereupon filed by appellants herein and denied (R. 78-130).

The cases now come to this court on appeal from the judgment and final action of the Supreme Court of Oklahoma.

The appellees in this court consist of the Corporation Commission of Oklahoma and owners of oil and gas leases upon and covering 94 per cent of the unitized area who favor the unitization of the pool pursuant to the order of the Corporation Commission.

The appellants herein are the lessees of approximately 4 per cent of the unitized area and royalty owners who are but a small part of the "several hundred royalty owners" found by the Commission (R. 1244) to own royalty

interests within the Unit Area. As further stated by the Commission in its order (R. 1241), a number of other royalty owners urged upon the Commission that the petition be granted.

Other Units

Attention is called to the fact that the particular unit here under consideration is not the only unit that has been created pursuant to the Oklahoma unitization law and that may be affected by the decision herein. In addition, thirteen other units have been so created by orders of the Corporation Commission pursuant to the same law, following substantially the same procedure and the same pattern as was followed in the case of the West Cement Medrano Unit. Several of the units so created embrace some of the larger and more active oil fields in the state, such as the West Edmond Hunton Lime Unit consisting of 30,000 acres, the Southwest Antioch Gibson Sand Unit embracing 7,500 acres, the Elk City Hoxbar-Conglomerate Sand Unit embracing approximately 4,500 acres, the Northeast Elmore Third Deese Sand Unit embracing 4,240 acres, *et al.* Several other such units have been created or are now in the process of being created or enlarged under the unitization law as subsequently amended by the 1951 Legislature.

Subsequent to the judgment in the cases from which these appeals are taken, the Supreme Court of Oklahoma in the cases of *Spiers* v. *Magnolia Petroleum Company, et al.*, October 23, 1951, Vol. 22, Okla. Bar Journal, pp. 1577, 1583, 1584, again sustained the validity of the law as well

as the sufficiency of orders of the Corporation Commission creating the Chitwood Spiers Sand Unit and the Chitwood Cunningham Sand Unit in Grady County, Oklahoma.

SUMMARY OF ARGUMENT

Point I.

House Bill 339 providing for unitized operation of separately owned tract within a common source of supply of oil and gas is a proper and reasonable exercise of the Police Power.

A. Unit operations necessary to proper use and control of reservoir energy and greatest recovery of oil and gas. Cited is a substantial amount of source material and court decisions showing that an oil and gas reservoir is inherently and by nature a single unit and that in order to properly operate the same, to recover the greatest quantity of oil and gas therefrom and to properly protect the correlative rights of the several owners, it is necessary that the same be operated as a unit. Included is the citation of the opinion in the case of *Burford* v. *Sun Oil Company* (1943), 319 U. S. 315, wherein this court said, "For these, and many other reasons based on geologic realities each oil and gas field must be regulated as a unit for conservation purposes." The point is made that an oil and gas reservoir is a "common source of supply", that the reservoir energy therein is "owned in common", and that the oil and gas constitutes a common fund", authorities being cited for each such statement.

B. Purposes of Act within scope of State's Police Power. Cited are the oil and gas conservation and correla-

tive rights cases by this court, commencing with *Ohio Oil Company* v. *Indiana*, (1900), 177 U. S. 190, down to *Cities Service Gas Company* v. *Peerless Oil and Gas Company* (1950), 340 U. S. 179. Although unnecessary to so decide in this case inasmuch as the statute and order under consideration have to do both with conservation and adjustment of correlative rights, it is pointed out that under the cases cited, the authority of the state in the exercise of the police power extend not only to matters of conservation and the adjustment of correlative rights in relation thereto, but also to the adjustment of the correlative rights of the owners of a common source of supply of oil and gas separate and apart from any question of conservation. Cited as further support for the statement just made is the opinion of Justices Rutledge, Black, Murphy and Burton in *Republic Natural Gas Company* v. *Oklahoma* (1950), 334 U. S. 62.

C. Unitization of separately owned tracts within common source of supply of oil and gas is recognized means of accomplishing purposes within Police Power. Cited are the cases of *Hunter* v. *McHugh* (1943), 320 U. S. 222; *Patterson* v. *Stanolind Oil & Gas Company* (1940), 305 U. S. 376; and *Ramsey* v. *City of Oxford* (1929), 280 U. S. 563, sustaining the authority of the state, or a city in the *Ramsey* case, in the exercise of their police power to require the unitization and unitized operation of separately owned tracts within a common source of supply for purposes within the police power. So far as the constitutional questions and the effect on the property rights and contracts of the several owners are concerned, there is no difference whatever between the operation and effect of unitization

and unitized operation of separately owned tracts within a drilling or spacing unit or a city drilling block on the one hand, and the unitization and unitized operation of some larger segment of the common source of supply on the other. The only difference is the size of the unit area and the number of tracts involved. Both involve identically the same operating problems.

D. Unitization and unitized operation of separately owned tracts authorized under Principles of Swampland, Irrigation, Mill Dam, and similar cases. Cited are the cases of *Wurts* v. *Hoagland* (1885), 114 U. S. 606; *Head* v. *Amoskeag Manufacturing Company* (1883), 113 U. S. 9; *Fallbrook Irrigation District* v. *Bradley* (1896), 164 U. S. 112, and cases to the same effect holding that it is within the power of the state where adjoining property or other rights are held by various persons in severalty, and in the improvement of which all have a common interest, that the law will provide a way whereby they may compel one another to submit to measures necessary to secure the full improvement and enjoyment thereof through joint effort and expense. There is a striking analogy between the necessity for the application of such principles to the drainage of privately owned swamplands, the irrigation of privately owned arid lands, and the creation of other types of conservancy and improvement districts, and that of the common source of supply of oil and gas which cannot be fully and properly developed and the greatest recovery obtained therefrom without the joint or unitized effort of the several owners and at their joint expense. In the cited cases the means adopted to accomplish such purpose was the creation of the long recognized drainage,

irrigation or like type of district. The unit provided for under the Oklahoma unitization law is no different from a drainage or irrigation district in design and purpose except that it is called a unit instead of a district.

E. Numerous other states have laws providing for unitization of separately owned tracts within a common source of supply. Cited are the laws of Arkansas and Louisiana, which provide for compulsory field-wide unitization of common sources of supply of oil and gas. The Louisiana law, in particular, has been made applicable to a number of the larger and more important fields in the state. Only one such order has been taken to the Supreme Court of the state and was there sustained in the case of *Crichton* v. *Lee* (1946), 209 La. 561, 25 So.2d 229. Reference is also made to the fact that a large number of the oil producing states have laws providing for the compulsory pooling and unitized operation of separately owned tracts within spacing or well drilling units. The laws in the other states are not cited as a reason for upholding the validity of the Oklahoma law except as showing that unitization of properties for oil and gas purposes is an accepted practice.

F. Provisions and requirements of House Bill 339 are reasonable. Analysis of the law shows that it conforms in all respects to due process by way of providing a full and complete hearing in respect to all matters, a full and complete review in the courts on appeal, and adequate safeguards to protect against abusive action by the unit in its unitized operation of the properties affected. Contrary to the statement of appellants, the Act does not arbitrarily turn over to any particular lessee or group of

lessees, large or small, integrated or nonintegrated, or other private persons, the right at will to dictate the manner and method in which a pool shall be unitized and operated, the property to be included, the apportionment of the unit production, or the operation of the properties of others. Instead, what is done, is done pursuant to order of the Corporation Commission, after notice and hearing, and upon such terms as the Corporation Commission prescribes. It is pointed out that the operation of the unitized properties is not by lessees as private persons but by the unit, which under the law is made "a body politic and corporate", a public corporation performing functions of government. This court in the case of *Fallbrook Irrigation District* v. *Bradley* (1896), 164 U. S. 112, upheld the power of the states to create such agencies of government consisting of interested property owners and to prescribe the powers with which they shall be endowed. The court in that case said that the officers of such a public corporation are public officers. It is pointed out how that in the management of the unit every lessee, whether he be a petitioner or not, has a voice in proportion to the interest of such lessee in the unit. Once the unit is organized, former reasons for differences cease to exist inasmuch as all then have only a common purpose, working in cooperation to recover the greatest possible volume of oil and gas from the common source of supply under and in accordance with the best and most efficient engineering and operating practices. There is nothing in the unitization law that takes away from the Corporation Commission its continuing jurisdiction under the general conservation laws, which jurisdiction was specifically reserved in the Commission by

the order in respect to the West Cement Medrano Unit (Paragraph 4 of Order, R. 1249).

G. Being within the scope of the Police Power, debatable questions of reasonableness, wisdom or propriety of the Act are for the Legislature, not the courts. Cited are the cases of *C. B. & Q. Railway Company* v. *McGuire* (1910), 219 U. S. 549; *McLean* v. *Arkansas* (1908), 211 U. S. 539; *Standard Oil Company* v. *Marysville* (1929), 279 U. S. 582; *Cities Service Gas Company* v. *Peerless Oil & Gas Company* (1950), 340 U. S. 179, and cases to the same effect.

Point II.

Provisions of the law requiring that petition be filed by designated percentage of interest of lessees and providing that proceeding be dismissed on protest of a certain percentage are not an unlawful delegation of legislative authority to private parties.

Under the decisions in *Currin* v. *Wallace* (1939), 306 U. S. 1; *Miller* v. *Schoene* (1928), 276 U. S. 272; *Doty* v. *Love* (1935), 295 U. S. 64; *Fallbrook Irrigation District* v. *Bradley* (1896), 164 U. S. 112; *United States* v. *Rock Royal Co-operative* (1939), 307 U. S. 533; *Parker* v. *Brown* (1942), 317 U. S. 341; and *Booth* v. *Indiana* (1915), 237 U. S. 391, the vesting in a percentage or class of private parties the exclusive right to institute some proceeding, or provision that the action of an agency of government be made subject to approval of a percentage or class of persons affected, is but a procedural step or condition prescribed by the legislature as a condition to the exercise of its legislative will and does not amount to the

delegation to such parties of legislative authority where if anything is to be done, it is done by or under the supervision of a governmental agency, and particularly where the right of judicial review is provided. In the case of the creation of a unit under Oklahoma House Bill 339, the petitioners are given no authority to impose their will upon the minority. If anything is done, it is done by or pursuant to order of the Corporation Commission, whose action is made subject to review on appeal by the Supreme Court of Oklahoma.

The cases of *Eubank* v. *City of Richmond* (1912), 226 U. S. 137; *Carter* v. *Carter Coal Company* (1936), 298 U. S. 238; and *Washington ex rel. Seattle Title & Trust Company* v. *Roberge* (1928), 278 U. S. 116, have no application inasmuch as in those cases the statutes or ordinances gave to a percentage or a class of persons the right, at their will and without any other legislative standard being provided, of saying what should be done with respect to the conduct, rights or property of a minority. No discretion or supervisory action of any kind by any agency of government was involved. No hearings were provided for. There was no right of appeal. These cases are expressly distinguished in the case of *Currin* v. *Wallace*.

Point III.

The procedural and other rights granted the lessees as distinguished from the lessors or royalty owners do not deny to the lessors or royalty owners the equal protection of the law.

The problem is merely one of reasonable classification of persons affected. The states have the power to

classify and treat differently parties and objects affected thereby so long as there is reasonable basis for such classification in respect to the lawful objects to be accomplished. Every presumption is in favor of the validity of the legislation and the reasonableness of the classification, and the burden is on the party attacking the same to show the lack of reasonable basis therefor. The reasons for classifying and treating differently oil and gas lessees and the lessors are obvious, some of which are that the lessee by its lease contract is given the right and is charged with the responsibility of the development and operation of the leased premises; the lessee is the one that has the geological, engineering and operating staff and is in the better position to know what should or should not be done from the standpoint of competitive or unit operations of properties in a common source of supply; the lessee is the one required to advance and pay the cost of the project; the lessee has the greater quantum of interest, namely, seven-eighths as compared with one-eighth; the lessor or royalty owner normally and usually does not have the technical staff or operating knowledge to know what should or should not be done in respect to the operation of oil and gas properties; and as a rule, the lessors are scattered throughout the United States.

All of the rights given to a lessee under House Bill 339 and not extended to lessors are rights in respect to which the lessee, as distinguished from the lessor, is in a position to know best what should be done. Certainly the class of persons who are called upon to pay the cost of the project are entitled to consideration not extended those who are not so called upon to defray such cost.

So far as participating in the hearing and pointing out to the Commission what should go into its order and the plan of unitization, or the right of appeal, is concerned, the royalty owners under House Bill 339 have every right granted the lessee.

Point IV.

Order and Plan of Unitization are reasonable and are supported by the evidence.

Pointed out is the fact that appellants' real objection on this score is one of evidence. Although it is assumed that under the decisions of this court in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies* (1940), 312 U. S. 287, 294, *Pennekamp* v. *Florida* (1946), 328 U. S. 331, and *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company* (1940), 310 U. S. 573, this Court will rely upon the findings of fact and the determination by the Corporation Commission of what is reasonable, as affirmed by the Supreme Court of Oklahoma, nevertheless under this Point, reference is made to sufficient evidence in the record to show that the challenged findings of fact by the Commission are supported thereby and that the order is not contrary to the undisputed evidence.

Point V.

The enactment of Senate Bill 203 by the 1951 Oklahoma Legislature amending House Bill 339 has no effect in this case.

This Point has no material bearing in this case except to eliminate confusion as to the effect of such amendment. The Supreme Court of Oklahoma has determined

that Senate Bill 203 is but a re-enactment and continuation of House Bill 339, with certain amendments, and has no effect on the rights of the parties in this case. Being an interpretation of the operation and effect of a state law, it is conclusive here. The amendment does not indicate a question in the minds of the Oklahoma Legislature as to the "legal" sufficiency of the law prior to amendment. It is significant, however, to demonstrate that after six years of experience under House Bill 339, under which fourteen units have been created, the state has through its Legislature redeclared its purpose and policy of fostering unitized operation of oil and gas pools by the enactment of the amended unitization law.

ARGUMENT

Point I.

House Bill 339 providing for unitized operation of separately owned tracts within a common source of supply of oil and gas is a proper and reasonable exercise of the Police Power of the State.

A. Unit operations necessary to proper use and control of reservoir energy and greatest recovery of oil and gas.

The technical reports, reports of investigation by governmental agencies, articles, court decisions, and other sources of authority cited in the Appendix to this brief leave no doubt that in fact and on the basis of sound engineering, a common source of supply or reservoir of oil and gas is the natural and proper unit of operation and that the operation thereof as a unit is necessary to a full and proper use of the reservoir energy, the greater re-

covery of oil and gas therefrom and the full protection of the coequal rights of the several persons having the right to produce or share in the production therefrom. The unitized control and operation of an oil and gas reservoir is the recognized scientific way in which an oil and gas reservoir should be operated.

Such facts have long been recognized by the courts.

This court in the case of *Burford* v. *Sun Oil Company* (1943), 319 U. S. 315, 318, in discussing the "unit" characteristics of an oil reservoir and the functions of the gas and gas energy therein as related to the production of oil, said:

> "Oil exists in the pores and crevices of rock and sand and moves through these channels. A large area of this sort is called a pool or reservoir and the East Texas field is a giant pool. The chief forces causing oil to move are gas and water, and *it is essential that the pressures be maintained at a level* which will force the oil through wells to the surface. As the gas pressure is dissipated, it becomes necessary to put the well 'on the pump' at great expense; *and the sooner the gas from a field is exhausted, the more oil is irretrievably lost.* Since the oil moves through the entire field, one operator can not only draw the oil from under his own surface area, but can also, if he is advantageously located, drain oil from the most distant parts of the reservoir. The practice of attempting to drain oil from under the surface holdings of others leads to offset wells and other wasteful practices; and this problem is increased by the fact that the surface rights are split up into many small tracts.
> * * *

*"For these, and many other reasons based on geologic realities, each oil and gas field must be regulated as a unit for conservation purposes. * * *"*

And further, p. 324:

"Of far more importance than any other private interest is the fact that the over-all plan of regulation, as well as each of its case by case manifestations, is of vital interest to the general public which must be assured that the speculative interests of individual tract owners will be put aside when necessary to prevent the irretrievable loss of oil in other parts of the field" (Emphasis ours).

As early as 1900 this court, in the case of *Ohio Oil Company* v. *Indiana*, 177 U. S. 190, 202, recognized that the source of supply of oil and gas is a "common reservoir" and that what occurs in one part of the reservoir directly affects the other portions thereof. It is in that case that this court refers to the oil and gas in common reservoir as being a "common fund". The court said:

> "True it is that oil and gas, like other minerals, are situated beneath the surface of the earth, but except for this one point of similarity, in many other respects they greatly differ. They have no fixed *situs* under a particular portion of the earth's surface within the area where they obtain. They have the power, as it were, of self-transmission. No one owner of the surface of the earth, within the area beneath which the gas and oil move can exercise his right to extract from the common reservoir, in which the supply is held, without, to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner, caused by a reckless enjoyment of his right of striking

the reservoir, at once, therefore, operates upon the other surface owners. Besides, whilst oil and gas are different in character they are yet one, because they are unitedly held in the place of deposit."

And continuing, p. 209:

"But there is a coequal right in them all to take from a common source of supply the two substances which in the nature of things are united, though separate. It follows from the essence of their right and from the situation of the things as to which it can be exerted, that he use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right to the detriment of the others, or by waste by one or more to the annihilation of the rights of the remainder. * * *"

The court in the case of *Danciger Oil & Refining Company* v. *Railroad Commission* (Texas) (1932), 49 S. W.2d 837, 842, said:

"To make each well or each lease a unit of regulation and the validity of a general order dependent upon whether waste was taking place as to it would obviously render impossible the enforcement of any conservation measure, general in scope, as was contemplated by the statute. Appellant might, in the operation of its leases, under approved methods, if considered as a unit, extract without physical waste as to its particular leases the maximum amount of oil or gas recoverable therefrom. But if in doing so it causes what has come to be commonly known to that industry as 'coning,' 'water channeling,' gas dissipation, or destruction of 'reservoir energy' available to the reservoir or pool as a whole, and so trap

off and lose oil that would otherwise be recovered by the owners of adjacent lands; and so reduce the ultimate aggregate recovery from the field, waste, as contemplated by the law, would necessarily result. *No particular lease or well can therefore be taken as a unit, but must be considered in its relation to adjacent leases or wells, with a view to conserving the whole, and is subject to regulation accordingly*" (Emphasis ours).

The Supreme Court of California in the case of *People ex rel. Stevenot* v. *Associated Oil Company* (1930), 211 Cal. 93, 294 P. 717, 724, said:

"For present purposes it need only be noted that oil in this state is found under layers of rock in a sand or sandstone formation termed a lentille or 'lentil,' under pressure caused by the presence of natural gas within the formation. The layers of rock thus form a gas-tight dome or cover for the oil reserve. The oil adheres in the interstices between the sand particles. The natural gas may be in a free state at the top of the dome, but is also in solution with the oil, thus increasing the fluidity of the oil and the ease with which the oil is lifted with the gas in solution when the pressure on the gas is released by drilling into the oil 'sand.' *It is estimated that only from 10 to 25 per cent of the total amount of oil deposited in a reservoir is ultimately recovered, depending on the natural characteristics of the reservoir and the methods employed in utilizing the lifting power of the gas.* The importance of gas in the oil-producing industry has, therefore, become a question of great concern to the industry itself and to government, to the end that its function may be fully utilized without waste" (Emphasis ours).

As stated earlier in the brief, the Supreme Court of Oklahoma in the case of *Russell* v. *Walker* (1932), 160 Okla. 145, 15 P.2d 114, 117, in describing the nature and ownership of the reservoir energy in a common source of supply, said that "it is owned in common by the owners of the common source of supply." The full statement of the court is as follows:

> "That rule applies, not only to the natural gas pressure, but to the hydrostatic pressure and to all other forces combining to constitute the reservoir energy incident to or existing in the common source of supply. That reservoir energy is essential to the production of oil from the source of supply. Without it, it would be impracticable, if not impossible, to produce oil from the depth at which it is found in the Oklahoma City field. It is owned in common by the owners of the common source of supply."

The function of reservoir pressure or energy and what can be accomplished by controlled maintenance of pressure through the return of gas or water to the reservoir is described in the case of *Utilities Production Corporation* v. *Carter Oil Company* (10 C. C. A., 1934), 72 F.2d 655, 659, as follows:

> "1. *Repressuring of oil wells.* When an oil well plays out, it is not because all the oil has been recovered, but because the gas or water pressure has been exhausted. When the strata overlying an oil sand is penetrated by the drill, the gas within the formation, being under pressure, seeks the outlet, carrying with it the oil. When that pressure is gone, there is nothing left to bring the oil within reach of the pump, except gravity, the operation of which is limited to upper strata of the sand, and there counteracted by

> properties of viscosity, capillarity and adhesion of oil to its mother sand. Oil is produced by the lateral thrust of the gas pressure to the hole, and, after it quits flowing, the vertical lift of the oil to the top by a pump. Many years ago it was conceived that played-out wells could be given a new lease on life by injecting gases or liquids under pressure into the oil sands, thus starting the cycle anew. * * *".

See also *Champlin Refining Company* v. *Corporation Commission* (1932), 286 U. S. 210; *Patterson* v. *Stanolind Oil and Gas Company* (1938), 182 Okla. 155, 77 P.2d 83, 91.

The conclusion from what has been said above has been well recognized in Summers on Oil and Gas, Permanent Edition (1938), Volume 1, Section 104, an eminent authority on oil and gas law, wherein it is said:

> "In the light of all the physical facts respecting an oil and gas reservoir *there can be no doubt but that the single reservoir or pool is the natural unit of development.* Through such development many of the evils of physical and economic waste resulting from waste or inefficient use of reservoir energy, competitive drilling and overproduction may be avoided and a greater quantity of oil or gas ultimately produced from the formation. *While the desirability of this type of development may be clear, the ownership of lands by many persons within a single pool, each privileged to drill and produce oil or gas, makes unit development of the entire pool impossible, unless by voluntary agreement or legislative compulsion these interests can be merged or unitized*" (Emphasis ours).

The facts and conclusions so stated, as related to the West Cement Medrano common source of supply, are most

forcibly expressed in the findings of the Oklahoma Corporation Commission in this case.[5] In substance the Commission found that without unitization, treating such tract as a separate operating unit, there was resulting a disproportionate, inequitable and wasteful utilization and dissipation of the gas energy to the detriment and disadvantage of the other tracts and to the injury of the pool as a whole; that by best known nonunitized methods of operation not more than 25 per cent of the oil in place could be recovered; that by and through unitized management and operation of the reservoir as a unit, full use could be made of the reservoir energy and many millions of barrels of additional oil could thus be recovered, a more equitable distribution of the recoverable oil and gas could be had between the several owners and the correlative rights of the several owners more fully protected.

In fact, appellants nowhere in the record nor in their briefs, either in the court below or this court, seriously challenge the propriety and benefits to be gained by and through the unitized operation of a common source of supply of oil and gas.

Appellant, The Palmer Oil Corporation, in its brief, at page 37, says, "It may also be conceded that early unitization of an entire common source of supply of oil and gas and unit operation thereof, may result, over a period of time, in the greatest recovery of oil and gas therefrom, and, depending upon many other facts and circumstances, may be the most efficient and modern method known under present scientific information [Cit-

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5. Paragraphs 6, 7, 8, 9, 11 and 12 of Findings of Fact, Order No. 20289 (R. 1245-47) quoted in full at pages 18-22 of this brief.

ing Summers on Oil and Gas, Volume 1, Section 104]." In this connection it should be noted that by the express terms of Sectfon 4 of the law under consideration, unitization under such law can be accomplished only in those cases where the Commission finds from the evidence that the desired beneficial results are likely to result. The law does not contemplate or authorize the indiscriminate unitization of all pools.

B. Purposes of Act within scope of State's Police Power.

The purpose of the Act is clearly stated and evidenced by its provisions and the legislative declaration of policy, namely, to bring about the greater ultimate recovery of oil and gas, prevent waste and protect and adjust the correlative rights of the owners thereof.

The authority of the state in the exercise of the police power to so enact reasonable legislation for such purposes is no longer subject to question. *Ohio Oil Co.* v. *Indiana* (1900), 177 U. S. 190; *Lindsley* v. *Natural Carbonic Gas Co.* (1911), 220 U. S. 61; *Walls* v. *Midland Carbon Co.* (1920), 254 U. S. 300; *Bandini Petroleum Co.* v. *Superior Court* (1931), 284 U. S. 8; *Champlin Refining Co.* v. *Corporation Commission* (1932), 286 U. S. 210; *Thompson* v. *Consolidated Gas Utilities Corp.* (1937), 300 U. S. 55; *Patterson* v. *Stanolind Oil & Gas Co.* (1940), 305 U. S. 573; *Hunter* v. *McHugh* (1943), 320 U. S. 222; *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.* (1950), 340 U. S. 179.

This court, in its latest expression, in the *Cities Service* case, last cited, said (p. 185):

"The Due Process and Equal Protection issues raised by appellant are virtually without substance. It is now undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas. This Court has upheld numerous kinds of state legislation designed to curb waste of natural resources and to protect the correlative rights of owners through ratable taking, *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210 (1932), or to protect the economy of the state. *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573 (1940). These ends have been held to justify control over production even though the uses to which property may profitably be put are restricted. *Walls* v. *Midland Carbon Co.*, 254 U. S. 300 (1920).

"Like any other regulation, a price-fixing order is lawful if substantially related to a legitimate end sought to be attained. *Nebbia* v. *New York*, 291 U. S. 502 (1934) and cases therein cited. In the proceedings before the Commission in this case, there was ample evidence to sustain its finding that existing low field prices were 'resulting in economic waste, and conductive to physical waste.' That is a sufficient basis for the orders issued."

Although it is unnecessary to so decide in this case inasmuch as the purposes involved have to do both with conservation and the adjustment of correlative rights, it is clear from the cases cited that the power of the state so relied upon extends not only to matters of conservation and the adjustment of correlative rights in relation thereto, but also to the adjustment of correlative rights of owners of a common source of supply of oil and gas separate and apart from any question of conservation.

Thompson v. *Consolidated Gas Utilities Corporation, supra; Ohio Oil Co.* v. *Indiana, supra; Bandini Petroleum Co.* v. *Superior Court, supra.* See also opinion of Justices Rutledge, Black, Murphy and Burton in *Republic Natural Gas Co.* v. *Oklahoma* (1950), 334 U. S. 62.

C. Unitization of separately owned tracts within common source of supply of oil and gas recognized means of accomplishing purposes within Police Power.

This court has recognized and held constitutional the forced unitization and unitized operation of separately owned tracts within a common source of supply to accomplish conservation of oil and gas or other purposes equally within the scope of the police power.

The case of *Hunter* v. *McHugh* (1943), 320 U. S. 222, involved a statute and order by the Commissioner of conservation of Louisiana, requiring unitized development and operation of a 640-acre drilling unit embracing a number of separately owned tracts, wherein provision was made for the development and operation thereof by one of the owners and for the sharing of the production and costs by other owners. Appellant's assignment of error in that case was "that the act and order deprive it of property without due process of law by compelling it to combine its leasehold with the land of others within the drilling unit for the purpose of gas production and to share with them its pipe line and other facilities for the production and marketing of gas, for which no compensation is provided by the act or order. Although this court did not pass on the reasonableness of the particular apportionment of

production and costs because no final order in that respect had been made, it, in respect to the constitutional question relating generally to the compulsory pooling and unitized operation of the tracts comprising the drilling unit, said (p. 227):

> "In the present posture of the record, so far as the appeal seeks to bring before us for review the judgment of the state court sustaining the constitutionality of the statute, the record presents no substantial Federal question. We have held that a state has constitutional power to regulate production of oil and gas so as to prevent waste and to secure equitable apportionment among landholders of the migratory gas and oil underlying their land, fairly distributing among them the cost of production and of the apportionment [Citing cases]."

The case of *Patterson* v. *Stanolind Oil & Gas Company* (1940), 305 U. S. 376, involved an attack, under the due process, contract and equal protection clauses of the Federal Constitution, upon the Oklahoma well spacing law and an order of the Oklahoma Corporation Commission which, like the statute and order involved in the *Hunter-McHugh* case, provided for the pooling of separately owned tracts within a well spacing unit and the apportionment of the production therefrom to the several owners on an acreage basis. This court said (305 U. S. 379):

> "In the light of our previous decisions, the plaintiff has failed to raise a substantial federal question and the appeal is dismissed for the want of jurisdiction."

The case of *Marrs* v. *City of Oxford* (1929), 32 F.2d 134, 140, certiorari denied 280 U. S. 563, involved a city

ordinance of the City of Oxford, Kansas, requiring the pooling and unitized operation for oil and gas purposes of separately owned lots within a city block. The court said:

> "We do not doubt the validity of the ordinance here challenged. Its requirements and regulations are in protection of the public welfare, effective if enforced to accomplish that purpose; and the passage and adoption of it cannot in our judgment be justly said to be an arbitrary and unreasonable exercise of the city's power. This is enough to dispose of the appeal.
>
> "But looking to the substance of things, as equity does, what are the rights of plaintiffs that will be encroached upon or denied to them by the enforcement of this ordinance? It is not the mere right to drill a well on one or two lots at great cost and stop with that, or to take the proportionate part of the oil and gas in the pool that might be said to lie under or be fairly attributed to those lots. The obvious purpose was to reach the pool as quickly as possible and take all of the oil and gas obtainable before others could get it, thus seriously encroaching upon and probably destroying the same rights of adjoining lot owners. If one or more lot owners have given a lease for which no permit is obtainable their lessee may join a lessee who has a permit in the same block on terms that are fair to both lessor and lessee. If a lot owner has not given a lease he is protected by the asking in a fair proportion of the mineral produced by a permittee. The regulations make every effort to protect, rather than to destroy rights. They extend equal opportunity to all who have an interest and eliminate the race between those having equal rights in a common source of wealth, so that some may not take all and leave others with nothing. Under the law in Kansas there is no property in oil and gas, because of their migratory nature, until they have been captured, though each

surface owner may take without limit, unless lawfully restrained. *Phillips* v. *Springfield Crude Oil Co.*, 76 Kan. 783, 92 P. 1119; *National Supply Co.* v. *McLeod*, 116 Kan. 477, 227 P. 350. This is the rule also in Pennsylvania and Indiana. The nature of this right was fully discussed and defined in *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190, 20 S. Ct. 576, 44 L. Ed. 729. The court in that case, after accepting the general practice as a settled principle, that every owner of the surface within a gas or oil field might prosecute his efforts and reduce to his possession if possible all of the deposits without violating the rights of other surface owners, in the absence of regulations to the contrary, said:

"'But there is a co-equal right in them all to take from a common source of supply, the two substances which in the nature of things are united, though separate. It follows from the essence of their right and from the situation of the things, as to which it can be exerted, that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right, to the detriment of the others, or by waste by one or more, to the annihilation of the rights of the remainder. Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste.'

"If this right in each and all of the surface owners can be thus restrained and its exercise regulated by a law of the state enacted for the purpose, how can it be held that a valid police regulation, which incidentally and in caution embodies the same restraint

and regulation, can be made the basis of a claim that plaintiffs have a right to take all of it, and any restraint of that right violates constitutional guaranties? The basis of a statute, suggested in the Indiana case, is the governmental power to equally protect each surface owner in his right to a common fund. * * *"

Other state decisions sustaining the validity of the unitization and unitized operation of separately owned tracts of land within drilling or spacing units are *Hood* v. *Southern Production Co.* (1944), 206 La. 642, 19 So.2d 336; *Placid Oil Co.* v. *North Central Texas Oil Co.* (1945), 206 La. 693, 19 So.2d 616; *Hardy* v. *Union Producing Co.* (1945), 207 La. 137, 20 So.2d 734; *Alston* v. *Southern Producing Co.* (1945), 207 La. 370, 21 So.2d 363; *Hunter* v. *Shell Oil Co.* (1947), 211 La. 893, 31 So.2d 10; *Croxton* v. *State* (1939), 186 Okla. 249, 97 P.2d 11; *Wood Oil Co.* v. *Corporation Commission* (1951) (not yet officially reported), 139 P.2d 1023. Other decisions upholding the validity of the unitization provisions of city drilling ordinances are *Blevins* v. *Harris* (1935), 172 Okla. 90, 44 P.2d 112; *Amis* v. *Bryan Petroleum Co.* (1939), 186 Okla. 206, 90 P.2d 936; *Anderson-Kerr Drilling Co.* v. *Van Meter* (1933), 162 Okla. 176, 19 P.2d 1068; *Helmerich & Payne* v. *Roxanna Drilling Corp.* (1932), 136 Kan. 254, 16 P.2d 663; *Marblehead Land Co.* v. *City of Los Angeles* (9. C. C. A., 1931), 47 F.2d 528; *Hunter* v. *Justice's Court of Centinela Township, County of Los Angeles* (1950), 36 Cal.2d 315, 223 P.2d 465.

So far as the constitutional questions and the effect on the property rights and contracts of the several owners are concerned, there is no difference whatever between the operation and effect of unitization and unitized opera-

tion of separately owned tracts within a drilling or spacing unit or a city drilling block, on the one hand, and the unitization and unitized operation of some larger segment of the common source of supply for some reason equally within the police power, on the other. The only difference is the size of the unit area and the number of tracts involved. There is the same centralized management and operation of the tracts whatever the size or number of tracts—the same sharing of facilities—the same adjustment of lease and other contract rights—the same apportionment of production to the separately owned tracts and owners—the same distribution of costs. The same questions in respect to the due process and contract clauses of the Constitution that are here raised were raised in the well spacing and city drilling ordinance cases. Under the Constitution there is no magic in the size of the unitized area so long as the purpose is within the police power.

It follows, therefore, that if the unitization of an entire common source of supply or some substantial portion thereof is reasonably required in the proper management, development and operation thereof, to procure therefrom the greatest ultimate recovery of oil, prevent waste and to fully protect the co-equal rights of the several owners thereof, purposes clearly within the scope of the police power, no reason from a constitutional standpoint exists why legislation providing for such unitization should not be adopted the same as in the case of the unitization of the smaller spacing unit or drilling block.

D. Unitization and unitized operation of separately owned tracts authorized under Principles of Swampland, Irrigation, Mill Dam, and similar cases.

A perfect analogy exists between the need for legislation in respect to unitization and unitized operation of separately owned tracts within a common source of supply of oil and gas and that necessitating legislation in respect to the drainage of swampland; the creation of irrigation districts, the building of mill dams, and the creation of other and various types of conservation and improvement enterprises, having for their purpose the better and more beneficial development, management and enjoyment, through joint effort and expense, of adjoining privately owned lands which by reason of their natural condition cannot be fully improved and enjoyed without joint action and at joint expense.

In the case of a common source of supply of oil and gas, it is "common" to the lands overlying the same. The reservoir energy in the reservoir, as said by the Oklahoma Supreme Court in *Russell* v. *Walker* (1932), 160 Okla. 145, 15 P.2d 114, 117, "is owned in common by the owners of the common source of supply." The oil and gas in the reservoir, under the holding of this court in *Ohio Oil Co.* v. *Indiana* (1900), 177 U. S. 190, is a "common fund". What one owner does directly and materially affects all others. The owners, acting separately, cannot so produce their wells and utilize the reservoir energy so as to obtain the greatest recovery of oil and gas. Because of the migratory nature of gas or water returned to the reservoir, the owners cannot, except through unitization

and joint effort, successfully engage in or carry on pressure maintenance or repressuring operations. Acting individually, the owners can recover only about 25 per cent of the oil which nature has placed in the reservoir, whereas through joint effort twice to three times as much can be recovered. The additional oil recovered through unitized operations is like the finding of a new source of supply of oil equal in size to that of the same source of supply in the absence of unitized operation. Like in the case of drainage of swamplands, the irrigation of arid lands and the building of mill dams, the public has a very definite interest in the results of the project and in the greater recovery and conservation of the natural resource.

In the case of *Wurts* v. *Hoagland* (1885), 114 U. S. 606, this court had under consideration the validity of a New Jersey act authorizing, upon proceedings instituted "by some of the proprietors," the drainage of privately owned swamplands, over the objection of other of the owners, which by reason of the natural condition thereof could not be improved and fully enjoyed without the concurrence of all and at their joint expense. This court said (p. 613):

> "This review of the cases clearly shows that general laws for the drainage of large tracts of swamps and lowlands, upon proceedings instituted by *some of the proprietors* of the lands to compel all to contribute to the expense of their drainage, have been maintained by the courts of New Jersey, (without reference to the power of taking private property for the public use under the right of eminent domain, or to the power of suppressing a nuisance dangerous to the public health) as a just and constitutional exercise of

the power of the Legislature, to establish regulations by which *adjoining lands, held by various owners in severalty and in the improvement of which all have a common interest*, but which, by reason of the peculiar natural condition of the whole tract, cannot be improved or enjoyed by any of them without the concurrence of all, *may be reclaimed and made useful to all at their joint expense*. The case comes within the principle upon which this court upheld the validity of general Mill Acts in *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9" (Emphasis ours).

In the case of *Head* v. *Amoskeag Manufacturing Company* (1885), 113 U. S. 9, cited in the *Hoagland* case, involved an act by the New Hampshire Legislature authorizing companies engaged in manufacturing to erect private dams along streams to create power for the operation of their mills even though by so doing, the land of upstream riparian owners was overflowed. This court, after discussing at length the various theories on which the mill dam acts and acts for the drainage of swamplands and other similar projects had been sustained, said (p. 21):

"We prefer to rest the decision of this case upon the ground that such a statute, considered as regulating the manner in which the rights of proprietors of lands adjacent to a stream may be asserted and enjoyed, with a due regard to the interests of all, and to the public good, is within the constitutional power of the Legislature.

"*When property in which several persons have a common interest, cannot be fully and beneficially enjoyed in its existing condition, the law often provides a way in which they may compel one another to submit to measures necessary to secure its beneficial enjoyment, making equitable compensation to*

any whose control of or interest in the property is thereby modified. * * *

"The statutes which have long existed in many States, authorizing the majority of the owners in severalty of adjacent meadow or swamplands to have Commissioners appointed to drain and improve the whole tract, by cutting ditches or otherwise, and to assess and levy the amount of the expense upon all the proprietors in proportion to the benefits received, have been often upheld, independently of any effect upon the public health, as reasonable regulations for the general advantage of those who are treated for this purpose as owners of a common property" (Emphasis ours).

In the case of *Fallbrook Irrigation District* v. *Bradley* (1896), 164 U. S. 112, this court, in sustaining the validity of a California law providing for the creation of irrigation districts for the irrigation and better improvement of privately owned lands, said (p. 163):

"The power does not rest simply upon the ground that the reclamation must be necessary for the public health. That indeed is one ground for interposition by the state but not the only one. Statutes authorizing drainage of swamp lands have frequently been upheld independently of any effect upon the public health, as reasonable regulations for the general advantage of those who are treated for this purpose as owners of a common property. *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9, 22 (28:889,894); *Wurts* v. *Hoagland*, 114 U. S. 606, 611 (29:229-230); Cooley, Taxn.2d ed. p. 617. *If it be essential or material for the prosperity of the community, and if the improvement be one in which all the landowners have to a certain extent a common interest, and the improvement cannot be accomplished without the concurrence of all or nearly all of such*

owners by reason of the peculiar natural condition of the tract sought to be reclaimed, then such reclamation may be made and the land rendered useful to all and at their joint expense. In such case the absolute right of each individual owner of the land must yield to a certain extent or be modified by corresponding rights on the part of other owners for what is declared upon the whole to be for the public benefit" (Emphasis ours).

For an interesting background discussion of the principles relied upon by this court in the cases last above cited, having their origin in early common law jurisprudence, see *Fiske* v. *Mfg. Co.* (Mass.), 12 Pick. 68; *Turner* v. *Nye* (Mass.), 14 L. R. A. 478; *Lowell* v. *City of Boston*, 111 Mass. 454.

The same principles were applied by the Supreme Court of Pennsylvania in the case of *Jukman* v. *Rosenbaum* (1919), 263 Pa. 158, 106 Atl. 238, and by this court on appeal in the same case, 260 U. S. 22, 30, to a Pennsylvania act authorizing the physical invasion of the surface of adjoining lands for the purpose of erecting a party wall and providing for the mutual rights and obligations of the adjoining owners in respect thereto. The Supreme Court of Pennsylvania, in the case before it, said (106 Atl. 243):

"If it be said that the dangers from fire may be amply provided against in other ways, the answer is that, since the ordained method presents a long-established, oft-approved, and reasonably proper means to accomplish the desired purpose, which in congested districts (where, for the public welfare, it is desirable and necessary to economize land space) contributes to the common economical management of

adjoining properties, its validity as a proper measure cannot be attacked successfully.

"In connection with the thought just suggested concerning the right to use the police power of the state to work out a common scheme for the economical management of adjoining properties, see *Wurts* v. *Hoagland*, 114 U. S. 606, 611, 5 Sup. Ct. 1086, 1089 (29 L. Ed. 229), involving the constitutionality of a state law for the common drainage of adjacent lands, where Mr. Justice Gray quoting from another case, states [Here the court quotes from *Wurts* v. *Hoagland*]:

"Upon the application of this power to a land irrigation case, see *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 163, 17 Sup. Ct. 56, 65 (41 L. Ed. 369), where it is said: 'In such case the absolute right of each individual owner of land must yield to a certain extent or be modified by corresponding rights on the part of other owners for what is declared upon the whole to be for the public benefit'."

This court, in affirming the case on appeal, said (260 U. S. 30):

"In the state court the judgment was justified by reference to the power of the state to impose burdens upon property or to cut down its value in various ways without compensation, as a branch of what is called the police power. *The exercise of this has been held warranted in some cases by what we may call the average reciprocity of advantage, although the advantages may not be equal in the particular case.* *Wurts* v. *Hoagland*, 114 U. S. 606, 29 L. Ed. 229, 5 Sup. Ct. Rep. 1086; *Fallbrook Irrig. Dist.* v. *Bradley*, 164 U. S. 112, 41 L. Ed. 369, 17 Sup. Ct. Rep. 56; *Noble State Bank* v. *Haskill*, 219 U. S. 104, 111, 55 L. Ed. 112, 116, 32 L. R. A. (N. S.) 1062, 31 Sup. Ct. Rep. 186, Ann. Cas. 1912A, 487" (Emphasis ours).

This court has further applied the principles so stated to an enforced composition in bankruptcy in which a number of individual creditors have a common interest. In the case of *Louisville Joint Stock Land Bank* v. *Radford* (1935), 295 U. S. 555, 585, this court said:

> "So far as concerns dissenting creditors, the composition is a method of adjusting among creditors rights in property in which all are interested. In ordering the adjustment, the bankruptcy court exercises a power similar to that long exercised by courts of law, *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9, 21, 28 L. Ed. 889, 893, 5 Sup. Ct. 441, * * *."

The applicability of the principles so discussed under this subhead D to the operation and development of a common source of supply of oil and gas is made clear in the opinion of Justices Rutledge, Black, Murphy and Burton in the case of *Republic Natural Gas Company* v. *Oklahoma* (1948), 334 U. S. 62, 74, 90.

Although the opinion in the *Republic* case appears as a dissenting opinion, the element of dissent had to do with a jurisdictional question which the majority of the court held precluded a consideration of the case on its merits, but from the special concurring opinion by Mr. Justice Douglas, it appears that a majority of the court were in accord with the minority opinion in respect to the constitutional questions involved.

E. Numerous other states have laws providing for unitization of separately owned tracts within a common source of supply.

Oklahoma is not the only state having laws that provide for the compulsory unitization of a common source of supply. Arkansas in 1951 adopted such a law patterned somewhat after the Oklahoma statute.[6] The States of Alabama[7], Georgia[8], Florida[9], and Louisiana[10] all have laws that provide for field-wide unitization where necessary to carry on cycling operations. The Louisiana law has been applied to a number of pools in that state and was sustained by the Supreme Court of Louisiana in the case of *Crichton* v. *Lee* (1946) 209 La. 561, 25 So.2d 229, in respect to an order of unitization relating to the Cotton Valley Pool.

The States of Alabama[11], Arkansas[12], Colorado[13], Georgia[14], Florida[15], Indiana[16], Louisiana[17], Michigan[18], Mississippi[19], New Mexico[20], Oklahoma[21] and Wyoming[22]

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6. Act 134 of the General Assembly of Arkansas, 1951, p. 286.
7. Title 26, Code of Alabama 1940, Cumulative Supplement 1947, Section 179.
8. Georgia Code Annotated, Chapter 43-7, Sections 43-716, and 43-717.
9. Florida Statutes Annotated, Chapter 377, Sections 37.27 and 37.28.
10. Title 30, Louisiana Revised Statutes 1950, Sections 9 and 10.
11. Title 26, Code of Alabama 1940, Cumulative Supplement 1947, Sections 35 and 36.
12. Title 53, Arkansas Statutes Annotated 1947 and 1949 Cumulative Pocket Part Supplement, Sections 53-114 and 53-115.
13. 1951 Cumulative Supplement to 1935 Colorado Statutes Annotated, Chapter 118, Section 68(6).
14. Georgia Code, Annotated, Chapter 43-7, Sections 43-716 and 43-717.
15. Florida Statutes Annotated, Chapter 377, Sections 37.27 and 37.28.
16. Burns' Indiana Statutes Annotated, Title 60, Chapter 7, Sections 60-764 and 60-765.
17. Title 30, Louisiana Revised Statutes 1950, Sections 9 and 10.
18. Compiled Laws of Michigan 1948, Chapter 319, Section 319.13.
19. Title 23, Mississippi Code 1942 and 1948 Cumulative Supplement, Sections 6132-21 and 6132-22.
20. New Mexico Statutes Annotated 1941 and 1949 Supplement, Chapter 69, Section 69-213½.
21. Title 52, Oklahoma Statutes 1951, Section 87.1.
22. 1951 Cumulative Pocket Part Supplement to Volume 4 of Wyoming Compiled Statutes 1945, Section 57-1113.

all have laws providing for the compulsory pooling and unitized operation of separately owned tracts within drilling or spacing units.

F. Provisions and requirements of the law are reasonable.

It requires only a brief review of the Act[23] to demonstrate its reasonableness and the extent of the protection and advantages afforded the nonconsenting land and royalty owners and lessees. It limits individual rights no more than is reasonably necessary and proper to accomplish the desired objectives. Certain adjustments of property and contract rights are of course necessary.

Contrary to the statements of appellants, the Act does not arbitrarily turn over to any particular lessee or group of lessees, large or small, integrated or nonintegrated, or other private individuals, the right at will to dictate the manner and method in which a pool shall be unitized and operated, the property to be included, the apportionment of the unit production, or the operation of properties of others.

Section 4 provides that before a unit can be created, the Commission, after notice and hearing, must determine and find that to do so will reasonably accomplish the objectives of the Act and that if such is the case, the Commission shall enter its order creating the unit, but upon "such terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect, safeguard and adjust the respective rights and obligations of the several persons

23. See pp. 4-16 of this brief.

affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants and others, as well as the lessees."

The range and adequacy of the hearing so provided for is evidenced by the twenty-four days of testimony in this case extending over a period of eight months and resulting in the voluminous record herein. It was no hyperbole when the Commission in its order (R. 1241) recited that "at the hearing everyone who desired to do so, regardless of the interest of such person, was given full opportunity to offer any and all competent evidence that any such person chose to offer, either for or against the recommended Plan of Unitization or by way of amendment thereto, and to otherwise be heard in regard thereto."

Section 5 requires that the *"order of the Commission"* define the unit area of the unit, limited to all or a portion of a single common source of supply, and prescribe the "plan of unitization" applicable thereto. Section 5 in detail sets out and outlines the legislative requirements and standards to guide the Commission in so defining the unit area and prescribing the plan of unitization for a particular unit. The requirements and standards in respect to the plan of unitization so set out cover every phase of unitization and unitized operation of an oil and gas pool, including, among other things, the manner and method of operation, the division of interest or formula for the apportionment or allocation of unit production, the method of financing, the initial adjustment of investment, the management of the unit, the time when the unit shall become effective, as well as when it shall end.

All that the petitioners or any group of lessees can do under the provisions of Sections 4 and 5 of the Act in respect to the formation of a unit is to file the petition and submit, for the convenience of the Commission, a recommended plan of unitization. What is done if a unit is to be created, the terms, provisions, conditions and limitations thereof, the definition and extent of the unit area, and what the plan of unitization shall provide are all determined and prescribed by the Corporation Commission after notice and hearing pursuant to the standards and guides prescribed by the Legislature.

Section 7 provides for a full, speedy and adequate review of any such order of unitization by the Supreme Court of the State of Oklahoma on appeal therefrom.

In addition, Section 7 authorizes any person, firm or corporation aggrieved by the order of the Commission or the action of a unit, to bring suit in the District Court of the county in which the unit is located to have his rights and equities determined, in connection with which the further right of appeal to the Supreme Court of Oklahoma obtains.

Sections 9 and 10 further spell out in detail the extent of the adjustment of the rights and interests of the parties resulting from and necessary to effect any such plan of unitization. Section 9 makes it clear that under no circumstances and in no event can the one-eighth part of the production constituting the normal one-eighth royalty of the landowner be chargeable with any part of the cost or expense of unit operation and that an otherwise free royalty in excess of the one-eighth can only be made

secondarily subject to such costs in the event the party who by contract is obligated to pay the same fails to do so. Even then the owner of the excess royalty who may be called upon to pay a part of the cost and expense is given full right of subrogation as against the interest of the party primarily obligated to pay the same.

A comparison of the provisions of Section 5, relating to the plan of unitization, and of Sections 9 and 10, further relating to the rights and obligations of the parties, with the more or less standard provisions of the voluntary unitization agreements prevailing throughout the oil and gas producing states in instances where unitization of pools or large areas is brought about by agreement, will show a marked similarity and will disclose that the Act under consideration does no more and goes no farther than is considered necessary where the parties are able to get together by 100 per cent agreement.

The operation of the unitized properties is not turned over to any lessee or lessees as private parties to operate as they please.

Section 9 of the Act provides that each unit so created shall be a "body politic and corporate". As such the unit is no different from the long recognized irrigation, drainage, levee, water improvement, conservancy and various other types of improvement districts. The Unit in this instance could well have been called an "oil and gas conservation district". The functions and characteristics are the same.

Thus the unit as such is a public corporation, a *quasi* municipal body, performing functions of government. Persons comprising such public corporations do not function as individuals but as public officers.

The right and authority of the states to so create such agencies of government consisting of interested property owners and to prescribe the powers with which they shall be endowed, are clearly stated by this court in the case of *Fallbrook Irrigation District* v. *Bradley* (1896), 164 U. S. 112, 174, as follows:

> "The formation of one of these irrigation districts amounts to the creation of a public corporation, and their officers are public officers. This has been held in the Supreme Court of California. *Re Madera Irrig. Dist. Bonds*, 92 Cal. 296, 14 L. R. A. 755; *People* v. *Selma Irrig. Dist.*, 98 Cal. 206.
>
> "There is nothing in the essential nature of such a corporation, so far as its creation only is concerned, which requires notice or hearing of the parties included therein before it can be formed. *It is created for a public purpose and it rests in the discretion of the legislature when to create it, and with what powers to endow it*" (Emphasis ours.).

See also *Hager* v. *Reclamation District* (1884), 111 U. S. 701, 705; *O'Neill* v. *Leamer* (1915), 239 U. S. 244, 253, 254; *Houck* v. *Little River Drainage District* (1915), 239 U. S. 254, 262-265; *Myles Salt Company* v. *Iberia Drainage District* (1915), 239 U. S. 478.

By the provisions of subparagraph (e) of Section 5 of the Act, each and every lessee within the unit area is given representation on the operating committee of the

unit and a vote equal to its proportionate interest in the unit. Each lessee, proportionate to its interest, has the same voice as does every other lessee. Those who were petitioners or proponents of the unit have no more voice in proportion to their interest than does the most violent dissenter. The appellant, The Palmer Oil Corporation, in this case is given representation on the Committee and has its voice in the management of the Unit.

Once a unit is created, prior differences as to whether the unit should have been created or as to the division of interest, etc., should not in any way affect the vote of any of the lessees on the operating committee. Once the unit is created, all have a single common purpose, namely, working in cooperation to recover the greatest possible volume of oil and gas from the common source of supply under and in accordance with the best and most efficient engineering and operating practices. This is one of the most important reasons for the success of unitized operations. Guiding the project is the combined judgment of all the lessees, having a common purpose. If The Palmer Oil Corporation is the highly efficient and commendable operator as pictured by its attorneys in this case, then through its representation on the Operating Committee it, in the interest of the public good, will contribute much to the judgment of the Operating Committee in the proper conduct of the unitized operations.

Under the law the royalty owners have everything to gain and nothing to lose, except possibly the royalty owners who in the absence of unitization are obtaining an undue proportion of the oil and gas from the common

reservoir and who under a plan of unitization receive only their fair and equitable share, The only real change in their status is that, instead of sharing to the extent of one-eighth in the limited production from a particular well or lease in the absence of unitization, they share in the same percentage in a much larger quantity of unitized production allocated to the tract or tracts in which they have an interest. There is no longer any problem of offset drainage or of the failure of individual lessees to fully and adequately develop the property. Any reasonable plan of unitization, as does the Plan of Unitization in respect to the West Cement Medrano Unit, would require the proper and efficient development and operation of the whole of the unit area in accordance with the best engineering and operating practices.

There is nothing in the unitization law that takes away from the Corporation Commission its continuing jurisdiction under the general oil and gas conservation laws as affecting operations carried on within the unit area. The Corporation Commission, by its order in this case, specifically reserved such jurisdiction in respect to the West Cement Medrano Unit and the Unit Area of said Unit (Paragraph 4 of order, R. 1249).

G. Being within the scope of the Police Power, debatable questions of reasonableness, wisdom or propriety of the Act are for the Legislature and not the Courts.

This court in *C. B. & Q. Railway Company* v. *McGuire* (1910), 219 U. S. 549, 569, said:

> "The scope of judicial inquiry in deciding the question of power is not to be confused with the scope

of legislative considerations in dealing with the matter of policy. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance."

In the case of *McLean* v. *Arkansas* (1908), 211 U. S. 539, 547, this court said:

"The legislature, being familiar with local conditions, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference unless the act in question is unmistakably and palpably in excess of legislative power [Citing cases]."

In the case of *Standard Oil Company* v. *Marysville* (1929), 279 U. S. 582, 584, this court tersely stated the rule as follows:

"We need not labor the point, long settled, that where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom and propriety are not for the determination of courts, but for that of the legislative body on which rest the duty and responsibility of decision [Citing cases]."

See also *Walls* v. *Midland Carbon Company* (1920), 254 U. S. 300; *Ohio Oil Company* v. *Indiana* (1900), 177 U. S. 190; *Jacobson* v. *Massachusetts* (1905), 197 U. S. 11.

In the case of *Cities Service Gas Company* v. *Peerless Oil and Gas Company* (1950), 340 U. S. 179, 186, this court said:

> "It is no concern of ours that other regulatory devices might be more appropriate, or that less extensive measures might suffice. Such matters are the province of the legislature and the Commission."

Point II.

Provisions requiring that petition be filed by designated percentage in interest of lessees and providing that proceeding be dismissed on protest of a certain percentage are not an unlawful delegation of legislative authority to private parties.

Appellants charge that the provisions of Section 4 of the statute requiring that the petition for an order of unitization be filed "by or with the authority of, lessees of record of fifty per cent (50%) or more of the area of the common source of supply or portion thereof sought to be unitized," and the provisions of Section 6 requiring that if at any time before sixty days after the entry of the order by the Commission "lessees of record of fifteen percent (15%) or more" of the unit area shall file a protest, the proceeding shall be dismissed, constitute an unlawful delegation of legislative authority to the lessees owning the percentage of interest so named, citing *Eubank* v. *City of Richmond* (1912), 226 U. S. 137; *Carter* v. *Carter*

Coal Company (1936), 298 U. S. 238; and *Washington ex rel. Seattle Title & Trust Company* v. *Roberge* (1928), 278 U. S. 116.

Such position is without merit and the cases thus cited have no application. In each such case the statute or ordinance involved gave to a majority or a class of persons the right, at their will and without any other legislative standard being provided, of saying what should be done with respect to the conduct, rights or property of a minority. No discretion or supervisory action of any kind by any agency of government was involved. No hearings were provided for. There was no right of appeal. This court in those cases held, and rightly so, that such action was an unlawful delegation of legislative authority to private parties and thus constituted the taking of property without due process of law.

An entirely different situation exists here. The percentage provisions of Sections 4 and 6 are merely jurisdictional steps or restrictions in connection with the taking or effectiveness of action by a duly constituted governmental agency. Here, before any action can be taken that will affect a minority or a class other than that having the right to initiate the proceeding, notice and a public hearing are required, all persons affected have an opportunity to be heard, and the duly constituted public agency must determine if the statutory grounds for such action exist and the terms and conditions upon which it shall be taken, if taken, all pursuant to legislative standards in respect thereto and from which action any person aggrieved has the right of a judicial appeal.

The constitutional questions involved have been put at rest in a number of cases by this court, some of which expressly distinguish the cases relied upon by appellants in this instance.

The case of *Currin* v. *Wallace* (1939), 306 U. S. 1, involved the Federal Tobacco Inspection Act authorizing the Secretary of Agriculture to designate the markets from which tobacco sold at auction could move in commerce, but provided that such action, in each case was dependent upon the approval of a designated percentage of the "growers". This court said (p. 15):

> "So far as growers of tobacco are concerned, the required referendum does not involve any delegation of legislative authority. Congress has merely placed a restriction upon its own regulation by withholding its operation as to a given market 'unless two-thirds of the growers voting favor it.' Similar conditions are frequently found in police regulations. *Thomas Cusack Co.* v. *Chicago*, 242 U. S. 526, 530, 61 L.ed. 472, 475, 37 S. Ct. 190, L. R. A. 1918A, 136, Ann. Cas. 1917C, 594. This is not a case where a group of producers may make the law and force it upon a minority (see *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 310, 318, 80 L. ed. 1160, 1188, 1192, 56 S. Ct. 855) or where a prohibition of an inoffensive and legitimate use of property is imposed not by the legislature but by other property owners (see *Washington ex rel. Seattle Title Trust Co.* v. *Roberge*, 278 U. S. 116, 122, 73 L. ed. 210, 214, 49 S. Ct. 50, 86 A. L. R. 654). Here it is Congress that exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required favorable vote upon the referendum is one of these conditions. The distinction was pointed out in *J. W. Hampton, Jr. & Co.* v.

United States, 276 U. S. 394, 407, 72 L. ed. 624, 629, 48 S. Ct. 348, where, in sustaining the so-called 'flexible tariff provision' of the Act of September 21, 1922, and the authority it conferred upon the President, we said: 'Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an Executive, or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be affected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district'."

The case of *Miller* v. *Schoene* (1928), 276 U. S. 272, involved a Virginia statute which made it the duty of the state entomologist "upon the written request in writing of ten or more reputable freeholders of any county or magisterial district" to make an investigation and to take action with respect to diseased cedar trees in conformity with certain other provisions of the act. This court said (p. 280):

"The statute is not, as plaintiffs in error argue, subject to the vice which invalidated the ordinance considered by this court in *Eubank* v. *Richmond*, 226 U. S. 137, 57 L. ed. 156, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76, Ann. Cas. 1914B, 192. That ordinance directed the committee on streets of the city of Richmond to establish a building line, not less than 5 nor

more than 30 feet from the street line whenever requested to do so by the owners of two-thirds of the property abutting on the street in question. No property owner might build beyond the line so established. Of this the court said (p. 143): 'It [the ordinance] leaves no discretion in the committee on streets as to whether the street [building, semble] line shall or shall not be established in a given case. The action of the committee is determined by two-thirds of the property owners. In other words, part of the property owners fronting on the block determine the extent of use that other owners shall make of their lots, and against the restriction they are impotent.'

"The function of the property owners there is in no way comparable to that the 'ten or more reputable freeholders' in the Cedar Rust Act. They do not determine the action of the state entomologist. They merely request him to conduct an investigation. In him is vested the discretion to decide, after investigation, whether or not conditions are such that the other provisions of the statute shall be brought into action; and his determination is subject to judicial review. The property of plaintiffs in error is not subjected to the possibly arbitrary and irresponsible action of a group of private citizens."

The case of *Doty* v. *Love* (1935), 295 U. S. 64, involved a Mississippi statute which permitted the reopening of closed banks upon terms proposed by three-fourths of the creditors in number or in value upon approval of the plan by the Superintendent of Banks and confirmed by the Court of Chancery. This court said (p. 70):

"The argument will not hold that the necessary operation of the statute is to subject dissenting creditors, who may be as many as one-fourth, to the

will or the whim of the assenting three-fourths. The creditors favoring reorganization, though they be ninety-nine per cent, have no power under the statute to impose their will on a minority. They may advise and recommend, but they are powerless to coerce. Their recommendation will be ineffective unless approved by the Superintendent. Even if approved by him, it will be ineffective unless the court after a hearing shall find it to be wise and just. Upon such a hearing every objection to the plan in point of law or policy may be submitted and considered. The decree when made by the Chancellor will represent his own unfettered judgment. The judicial power has not been delegated to nonjudicial agencies or to persons or factions interested in the event. Like statutes have been upheld by the courts of other states [Citing cases]."

The case of *Fallbrook Irrigation District* v. *Bradley* (1896), 164 U. S. 112, involved a California statute authorizing the creation of irrigation districts upon petition of a specified number of persons affected and giving to the supervisor and the people the right to say whether such a corporation shall be created. This court said (p. 178):

"An objection is also urged that it is delegating to others a legislative right, that of the incorporating of public corporations, inasmuch as the act vests in the supervisors and the people the right to say whether such a corporation shall be created, and it is said that the Legislature cannot so delegate its power, and that any act performed by such a corporation by means of which the property of the citizen is taken from him either by the right of eminent domain or by assessment results in taking such property without due process of law.

"We do not think there is any validity to the argument. The Legislature delegates no power. It enacts conditions upon the performance of which the corporation shall be regarded as organized with the powers mentioned and described in the act."

The case of *United States v. Rock Royal Co-operative* (1939), 307 U. S. 533, involved the provisions of Section 8c(9)(B) of the Agricultural Marketing Act of 1937 authorizing the Secretary of Agriculture to approve marketing agreements signed by "fifty per cent or more of the handlers" of certain agricultural products, or to issue orders in respect thereto in the absence of such an agreement provided such order is approved or favored by two-thirds or more of certain of the producers. This court said (p. 577):

"2. Delegation to Producers. Under § 8c(9)(B) of the Act it is provided that any order shall become effective notwithstanding the failure of 50 per cent of the handlers to approve a similar agreement, if the Secretary of Agriculture with the approval of the President determines, among other things, that the issuance of the order is approved by two-thirds of the producers interested or by interested producers of two-thirds of the volume produced for the market of the specified production area. By subsection 19 it is provided that for the purpose of ascertaining whether the issuance of such order is approved 'the Secretary may conduct a referendum among producers.' The objection is made that this is an unlawful delegation to producers of the legislative power to put an order into effect in a market. *In considering this question, we must assume that the Congress had the power to put this Order into effect without the approval of*

anyone. Whether producer approval by election is necessary or not, a question we reserve, *a requirement of such approval would not be an invalid delegation*" (Emphasis ours).

The case of *Parker* v. *Brown* (1942), 317 U. S. 341, involved the California Agricultural Prorate Act authorizing the establishment of prorate marketing plans upon petition of ten producers and after notice and hearing, conditioned further upon the subsequent approval thereof by a specified percentage of the producers in a given zone. This court said (p. 352):

> "It is the state which has created the machinery for establishing the prorate program. *Although the organization of a prorate zone is proposed by producers, and a prorate program, approved by the Commission, must also be approved by referendum of producers, it is the state, acting through the Commission, which adopts the program and which enforces it with penal sanctions, in the execution of a governmental policy.* The prerequisite approval of the program upon referendum by a prescribed number of producers is not the imposition by them of their will upon the minority by force of agreement or combination which the Sherman Act prohibits. The state itself exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required vote on the referendum is one of these conditions. Compare *Currin* v. *Wallace*, 306 U. S. 1, 16, 83 L. ed. 441, 451, 59 S. Ct. 379; *J. W. Hampton Jr. & Co.* v. *United States*, 276 U. S. 394, 407, 72 L. ed. 624, 629, 48 S. Ct. 348; *Wickard* v. *Filburn*, 317 U. S. 111, *ante*, 122, 63 S. Ct. 82" (Emphasis ours).

The case of *Booth* v. *Indiana* (1915), 237 U. S. 391, involved an Indiana statute requiring the furnishing of washrooms in mines upon the request in writing of twenty or more employees, or in case there were not so many employed, then upon the request of one-third of the employees. This court said (p. 398):

> "There remains to be considered only the contention that the law 'is, within itself, a dead letter.' And it is said that 'it *would forever lie dormant if not called into exercise and activity by the request of private persons.*' Or, as plaintiff in error otherwise expresses what he thinks to be the evil of the law, '*it is not enforceable by any power which the state government possesses, under its Constitution, or its laws enacted thereunder, but it is enforceable only upon the demand, the whim, or the election of a limited number of employees in the coal mining business.*' And it is declared that 'this is the exercise of an arbitrary power, for an arbitrary private right, and against a private business.'
>
> "We have quoted counsel's language in order to give them the strength of their own expressions of what they consider the vice of the law; but manifestly it is but a generalization from the particular objections which we have considered, and those objections we have sufficiently discussed. (Emphasis ours).
>
> "Judgment affirmed."

Under House Bill 339, if anything is to be done, it is not done by the petitioners or any percentage of the lessees. They do not impose their will upon the minority. What is done is done by order of the Corporation Com-

mission, after notice and hearing, pursuant to a policy and standards prescribed by the Legislature and subject to review on appeal. The percentage requirements in respect to the filing of a petition and the percentage of the lessees required to acquiesce, as evidenced by a failure of a designated percentage to protest, are but conditions prescribed by the Legislature to the enforcement of its will.

Point III.

The procedural and other rights granted the lessees as distinguished from the lessors or royalty owners do not deny to the lessors or royalty owners the equal protection of the law.

The provisions of Sections 4 and 6 of the statute giving to a percentage of the lessees the right to file a petition for unitization, or by protest to bring about a dismissal thereof, and the other provisions of the law and plan of unitization giving to the lessees rights in respect to the management of the unit not granted the lessors or royalty owners do not deny to the lessors or the royalty owners the equal protection of the law.

The answer is merely that of a reasonable classification of the persons so affected.

It is elementary to say that there is nothing in the Constitution that prohibits the states, in the enactment of legislation, to classify and treat differently parties and objects affected thereby so long as there is a reasonable basis for such classification in respect to the lawful objects to be accomplished. *Field* v. *Barber Asphalt Paving*

Company (1904), 194 U. S. 618; *New York Rapid Transit Corporation* v. *New York* (1938), 303 U. S. 573; *Clark* v. *Kansas City* (1900), 176 U. S. 114; *Lakeshore & M. S. Railway Company* v. *Clough* (1917), 242 U. S. 375; *Great Atlantic & Pacific Tea Company* v. *Grosjean* (1937), 301 U. S. 412; *Kotch* v. *River Port Pilot Commissioners* (1947), 330 U. S. 552; *Pacific States Box & Basket Company* v. *White* (1935), 296 U. S. 176; *Lindsley* v. *Natural Carbonic Gas Company* (1911), 220 U. S. 61.

It is equally well established that every presumption is in favor of the validity of legislation and the exercise by the state of its police power and that the burden is on persons attacking the same to show wherein the facts do not warrant the same or warrant the classification by the state of the persons or objects affected. *Pacific States Box & Basket Company* v. *White* (1935), 296 U. S. 176; *Corporation Commission* v. *Lowe* (1930), 281 U. S. 431; *Lindsley* v. *Natural Carbonic Gas Company* (1911), 220 U. S. 61; *Bradley* v. *Richmond* (1913), 227 U. S. 477; *Alaska Packers Association* v. *Industrial Accident Commission* (1935), 294 U. S. 532.

This court in the case of *Pacific States Box & Basket Company* v. *White*, *supra*, said (p. 185):

> "When such legislative action is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary."

The differences between the position and interests of the lessees on the one hand and of the lessors or royalty owners on the other are obvious. Some of such differences are:

(a) The lessee by its lease contract is given the right and is charged with the responsibility of the development and operation of the leased premises. The unitized development, management and operation of a common source of supply is functionally an operating problem.

(b) The lessee is the one that has the geological, engineering and operating staff and is thus in the better position to know what should or should not be done from the standpoint of competitive or unit operation of properties in a common source of supply.

(c) The lessee is the one that, under the unitization law and any plan of unitization prescribed thereunder, is required to advance the money and defray the cost and expense of the project. The persons paying the cost of the project should have a greater voice.

(d) The lessee has the greater quantum of interest in respect to the production from the leased premises, namely, seven-eighths as compared with one-eighth.

(e) The lessor or royalty owner normally and usually does not have the technical staff or operating knowledge to know what should or should not be done in respect to matters of operation and of unitization.

(f) The royalty owners are, as a rule, scattered and do not generally have first-hand information as to the status of individual wells or the engineering or geological

conditions prevailing with respect to the area sought to be unitized.

As was said by the Supreme Court of Oklahoma in its opinion in this case (R. 41):

> "The distinction between the lessee and the royalty owners as classes in interest and the reason why the Legislature should extend the privilege so responsible to one and not the other is so manifest that it precludes any idea that in so doing the legislative act was capricious."

Except for the right of a designated percentage of the lessees to file the petition or of a designated percentage of the lessees to bring about a dismissal thereof by the filing of protests, absolutely no distinction is made as between the lessees, lessors or royalty owners in the hearing before the Corporation Commission on such a petition. All have the same right to appear and be heard, and in the making of any order pursuant thereto the Commission by Section 4 of the law is required to make the same "upon such terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect, safeguard and adjust the respective rights and obligations of the several persons affected, *including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants* and others, as well as the lessees." All have the same right of appeal.

In the particular case now before the court, as shown by the record herein, the nonconsenting royalty owners have been given every consideration both before the Cor-

poration Commission and before the Supreme Court of Oklahoma on appeal.

Point IV.

Order and Plan of Unitization are reasonable and are supported by the evidence.

Considered under this Point will be the contentions of appellants that the West Cement Medrano Pool is not a common source of supply and that the order of the Commission and certain provisions of the Plan of Unitization, including the division of interest, are unreasonable. The contentions of appellants are here so grouped because all involve an evidentiary review of the Commission's express findings of fact and its determination of what is fair and reasonable.

There is no foundation for appellants' statements that the findings of fact of the Commission are contrary to the undisputed evidence. Its findings of fact and determination of what is fair and reasonable are supported by an abundance of testimony. The most that appellants can claim is that in certain respects there was conflicting evidence. The same fact questions and questions as to the reasonableness of the Commission order presented here were presented to and determined adversely to appellants by the Supreme Court of Oklahoma in its decision herein appealed from (R. 28-56).

In regard to a further independent review of the evidence, this court, in the case of *Milk Wagon Drivers Union* v. *Meadowmoor Dairies* (1940), 312 U. S. 287, 294, said:

"It is not for us to make an independent valuation of the testimony before the master. We have not only his findings but his findings authenticated by the state of Illinois speaking through her supreme court. We can reject such a determination only if we can say that it is so without warrant as to be a palpable evasion of the constitutional guaranty here invoked. The place to resolve conflicts in the testimony and in its interpretation was in the Illinois courts and not here. To substitute our judgment for that of the state court is to transcend the limits of our authority."

In the case of *Pennekamp* v. *Florida* (1946), 328 U. S. 331, 345, this court said:

"While the ultimate power is here to ransack the record for facts in constitutional controversies, we are accustomed to adopt the result of the state court's examination."

In respect to this court substituting its judgment for that of a state regulatory agency as to what is reasonable and proper in respect to oil and gas matters peculiarly within the knowledge of the regulatory agency, this court, in the case of *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company* (1940), 310 U. S. 537, 580, wisely said:

"A controversy like this always calls for fresh reminder that courts must not substitute their notions of expediency and fairness for those which have guided the agencies to whom the formulation and execution of policy have been entrusted."

And again on rehearing in the same case, 311 U. S. 570, 575:

"For its own good reason Texas vested authority over these difficult and delicate problems in its Rail-

road Commission. Presumably that body, as the permanent representative of the state's regulatory relation to the oil industry equipped to deal with its ever-changing aspects, possesses an insight and aptitude which can hardly be matched by judges who are called upon to intervene at fitful intervals."

Because of the views expressed by this court in the cases last cited, appellees will not indulge in a lengthy or detailed discussion of the evidence, but will answer the contentions of appellants only to the extent necessary to show that the Commission did not act without basis in fact or under the evidence. We will limit our discussion to those particular points wherein the appellants challenge the sufficiency of the order and the evidence.

A. The Unit is a single common source of supply.

The Corporation Commission, in Finding No. 2 of its order (R. 1243) expressly found that the whole of the Medrano Sandstone underlying the Unit Area "constitutes a single common source of supply of oil and gas, all parts of which are permeably connected so as to permit the migration of oil or gas from one portion of the common source of supply to another." Although the order recites that faults are known to exist, it further finds that they are not such as to prevent substantial migration of oil and gas from one part of the common source of supply to another.

The record shows that the hearing in this case was not the first knowledge and experience of the Commission in respect to this problem. Appearing in the evidence are Exhibits 12 to 22 (R. 1345-1398, offered in evidence

R. 205), being prior orders and findings of the Commission relating thereto, dating from January 4, 1943, when the pool was first regulated by the Commission.

The prior orders recite the studies made of the pool to determine if it was a single common source of supply, culminating in Order No. 17736 dated April 10, 1945 (Exhibit 22, R. 1396) finding and determining the whole of the Medrano Sandstone formation to be "in fact one common source of supply." As disclosed by the orders, the studies so made were participated in by the Conservation Department of the Commission, the United States Bureau of Mines, as well as the operators, and involved actual well performance and bottom hole pressure tests. Order No. 16399 (Exhibit 16, R. 1366) ordered the shutting in of the gas wells for two weeks as a part of the study.

Every proration and other conservation order of the Corporation Commission relating to the West Cement Medrano Pool since its discovery, and there have been many, has been predicated on the basic fact that the pool is a single common source of supply.

The fact that the pool was a single common source of supply and that the faults known to exist were not such as to constitute impervious barriers was testified to at length by the witnesses in the case (R. 213, 237, 239-40, 317-18, 232-24, 360, 364-66, 373-74, 603-22, 730-34). Much of the intervening testimony was cross-examination involving details supporting the conclusions so reached. The witnesses were men thoroughly qualified who were acquainted with and followed the development of the field from the date of its discovery and who had participated in the field-

wide detailed study of the field looking to unitization (R. 206, 208, 229, 230-34, 427). The Commission saw the witnesses, knew their qualifications, and was in a position to appraise the competency and reasonableness of their testimony.

The evidence relied upon by appellants consists of a number of exhibits which merely show or make reference to the known faults, which for one purpose or another were used to classify the different parts of the field by fault segments. As stated in the findings of the Commission, the presence of the faults has been known, but this is far from saying that the faults constitute complete barriers separating the pool into separate common sources of supply. Several of the exhibits were made by or under the direction of the witnesses who testified in the case, who explained that the exhibits did not show what the appellants here claim they show.

B. It was not too late to accomplish beneficial results merely because approximately two-thirds of the reservoir energy had been produced or expended.

Neither common sense nor the statute arbitrarily conditions the making of an order of unitization upon any percentage or stage of depletion of reservoir energy. The criterion, set forth in Section 4 of the Act, is the added recovery of oil and gas that can be obtained by unitized methods of operation as compared with that which can be obtained in the absence of unitization.

The Commission in this respect, notwithstanding the stage of depletion of the natural reservoir energy, found:

"That by and through the unitization of the proposed Unit Area and the unitized management and operation and further development thereof as a unit, all as set out and provided for in the Plan of Unitization hereto attached, full use can be made of the gas energy in the reservoir to the mutual advantage of all the owners of the said common source of supply of oil and gas, that waste of large volumes of oil and gas can be prevented, gas can and will be returned to the reservoir to supplement the natural reservoir energy, water encroachment, either natural or artificial, on the lower side of the pool can be properly controlled and utilized, substantially more oil, amounting to many millions of barrels, can be recovered from the common source of supply than can be otherwise recovered, a more equitable distribution of the recoverable oil and gas can be had as between the several owners of the pool, and the correlative rights of the several owners can be more fully protected" [Finding No. 7, Order No. 20239, R. 1246].

The evidence in this regard was that the additional recovery as a result of the order and Plan of Unitization in this case could reasonably amount to as much as 24 to 25 million barrels, or approximately twice what could otherwise be recovered (R. 250-54, 260-73, 283-84, 851-84).

This is the equivalent of finding an entire new oil pool of comparable size and productivity to that of the pool in the absence of unitized operation.

Appellants nowhere in their briefs take issue with the findings or evidence on this score.

C. The Plan does not include acreage not proven to contain productive oil and gas.

The only contention of appellants in this regard is that wells have not been drilled on all of the tracts and that in one or two instances tracts were included on which wells referred to by them as dry holes had been drilled.

The Commission, however, after hearing all the evidence, found (Finding No. 2, R. 1243) that the whole of the Medrano Sandstone underlying the unitized area was a part of and constituted the Medrano common source of supply, was oil and gas bearing, and that (Finding No. 4, R. 1244) the limits thereof were reasonably defined by drilling operations.

The actual drilling of wells on every man-made subdivision of land is not necessary to prove that an oil and gas bearing formation exists under such tract of land. This can be proven by drilling around the different tracts. Likewise the drilling of an uneconomical or so-called dry hole at a particular spot does not condemn an entire tract nor prove that the tract is not underlain with oil and gas that can be recovered by unitized operations. One of the advantages of unit operations is the recovery for the benefit of the landowners of oil that cannot otherwise be recovered.

There was an abundance of testimony that all of the tracts included within the Unit were a part of the common source of supply and underlain by oil and gas producible therefrom (R. 209, 238-39, 297-98, 407-8, 510-17, 566-72, 597-98). It was clear from the testimony that Exhibits 54R and 56R (R. 1496, 1500), geologic maps relied

upon by all parties throughout the hearing, reflected the answer to the question of the productive limits of the common source of supply. Both Mr. C. H. Keplinger and B. T. Murphree, engineers testifying on behalf of the protestants before the Commission, the appellants here, acknowledged the reasonable accuracy and reliability of such exhibits (R. 963, 1116-17).

D. The division of interest is fair and reasonable.

The Commission in this regard found:

> "* * * that the division of interests set forth in 'Exhibit B' attached to said Plan of Unitization pursuant to which the unit production is to be apportioned and allocated among and to the several separately owned tracts within the Unit Area is fair and equitable and is such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof; that the division of interest assigned to the several separately owned tracts in the Unit Area as set out in said 'Exhibit B' to said Plan of Unitization is fair and reasonably representative of the value of said several tracts for oil and gas purposes and the contributing value thereof to the unit in relation to like values of other tracts in the unit; that the basis used to arrive at said division of interest takes into account the acreage of the several separately owned tracts, the quantity of oil and gas recoverable therefrom, the location thereof on structure, the probable productivity of oil and gas from such tracts in the absence of unitization, the burden of operation to which such tracts will or are likely to be subjected, together with

all other pertinent engineering, geological and operating factors as are reasonably susceptible of determination; * * *" [Finding No. 11, R. 1247].

Appellant, The Palmer Oil Corporation, simply by statement says that the division of interest so established is objectionable (its brief, pp. 73-74) because (a) it fails to attribute to the Palmer interest in the Palmer-Sterba lease credit for oil which it claims could have been drained from below 6,000 feet, which had been reserved to Gulf Oil Corporation by its contract with The Palmer Oil Corporation (Exhibits 34 and 35, R. 1477, 1527); (b) it fails to compensate The Palmer Oil Corporation for the risk incurred in drilling dry holes on the lease; (c) it gave Palmer no special consideration because of its "commendable qualities" as an operator nor to comparative lifting costs as between leases; and (d) the alleged inaccuracy of certain of the technical factors used to arrive at the division of interest.

The argument of appellants in these respects is too inconsequential to call for a detailed answer. Suffice it to say that the record discloses that 50 per cent or more of the testimony and other evidence was given over to a detailed and careful consideration of the various steps used to arrive at the percentage of participation or the division of interest, as it is variously called, including all of the considerations raised by appellants. Perhaps the most condensed portions of the evidence relating thereto are to be found at record pages 290-316, 567-572, 618-690, 705-722. It was uncontradicted that the procedures and formula so used to arrive at the division of interest were

in accordance with sound and accepted geological and engineering practices (R. 313, 315, 863).

The fact that the formula and procedures so used may not be made with mathematical nicety or in exact quality is no objection. *Lindsley* v. *Natural Carbonic Gas Company* (1911), 220 U. S. 61, 78.

The provisions of the Plan of Unitization prescribing the vote by which action of the Operating Committee of the Unit shall be taken (Paragraph VIII of Plan of Unitization, R. 1250, 1258-1262) are necessary and reasonable. As pointed out under subhead F of Point I of appellees' argument herein, the Unit so created by the order of the Commission is "a body politic and corporate", a *quasi* municipal body, performing functions of government. It is only proper that the authority creating such a body prescribe how and by what means it shall function. Subparagraph (e) of Section 5 of the law specifically provides for an Operating Committee to manage its affairs. The members of the committee as such do not act as individuals but as *quasi* public officers. It is usual and customary that any board, agency, industry committee or other group performing functions of this kind act as a body pursuant to a vote of less than the whole. All have a vote. Furthermore, the action of the Operating Committee in this instance is circumscribed and controlled by the detailed provisions of the Plan of Unitization prescribed by the Corporation Commission (R. 1250-1300). The Plan of Unitization itself fixes the division of interest and how the unit production is to be allocated, how the costs are to be paid and apportioned, the accounting procedure, how the investment is to be adjusted, what the method of op-

eration shall be, and all matters of major importance. In instances where discretion is left to the Operating Committee, standards to guide the committee are stated. The Plan of Unitization itself sets out clearly how the Unit is to be carried on and shall function.

Perhaps the greatest evidence of the fairness and reasonableness of the Plan of Unitization prescribed by the Commission is not only the fact that the Commission itself, familiar with the pool and familiar with the subject matter with which it was dealing, adopted it after twenty-four days of evidence in which the protestants, appellants here, raised every point of objection here presented, but the further fact that twelve lessees in the field, some little, some big, some corporations, some individuals, some owning leases in one end of the field, some in the other, some owning only leases in the gas cap, others owning leases only in the oil zone, in all owning leases on 94 per cent of the Unit Area, are subscribers thereto. (R. 286) and, in addition, the Supreme Court of Oklahoma, after reviewing the evidence, approved the same. It is interesting to note that the protesting lessees, who have refused to subscribe to the Plan, likewise refused to join in the study of the facts in the first instance to determine whether or not unitization would result in a substantially greater recovery of oil for the advantage of all concerned, or to work with the other lessees in their endeavor to work out a fair and reasonable plan of unitization to recommend to the Corporation Commission (R. 288).

The thing that is most noteworthy about the whole of appellants' attack on the reasonableness of the order and the sufficiency of the evidence to sustain the same is

the relative insignificance of the points so raised as compared with the great benefits and importance of the overall project.

Point V.

The enactment of Senate Bill 203 amending House Bill 339 has no effect in this case.

The interpretation by the Supreme Court of Oklahoma (R. 1536-38) was that the enactment of Senate Bill 203, May 26, 1951, by the 1951 Oklahoma Legislature[24] was but a re-enactment and continuation in effect of House Bill 339, with certain amendments, and has no effect on the rights of the parties in this case. Being an interpretation of the operation and effect of a state law, it is conclusive here. In fact, appellants, except for one or two loose statements, do not contend otherwise.

The conclusion by the Supreme Court of Oklahoma in such regard is but a statement of the universal rule that where, as here, a statute is repealed and all or some of its provisions are at the same time re-enacted, the re-enactment is considered a reaffirmance of the old law and a neutralization of the repeal, so that the provisions of the repealed act which are thus re-enacted continue in force without interruption, and all rights and liabilities incurred thereunder are preserved and may be enforced, and further, that proceedings instituted under the law so repealed and re-enacted do not fall but may be continued and concluded under the new law. *Bear. Lake and River*

24. Sections 1 to 16, Chapter 3a, Title 52, Session Laws of Oklahoma, 1951, set out in full as Appendix "J", page 302, of Statement As to Jurisdiction by The Palmer Oil Corporation in Case No. 301.

Waterworks & Irrigation Company v. *Garland*, 164 U. S. 1; 50 Am. Jur., Statutes, Sec. 573, p. 538; 59 C. J., Statutes, Sec. 529, p. 927.

The amendment of the law does not in any way indicate a question in the minds of the Oklahoma Legislature as to the "legal" sufficiency of the law prior to the amendment. Such an assertion by appellants is sheer speculation. Legislative acts are amended from time to time for many and varied reasons.

The significant thing, however, is that after six years of effectiveness of House Bill 339, with the experience and knowledge gained by the creation of fourteen units thereunder, the state through its Legislature redeclared its purpose and policy of fostering the unitized operation of oil and gas pools by the enactment of the amended unitization law. The unanimity of thinking on the part of the legislative branch of the state in respect to the benefits of unitized operation of oil and gas pools is evidenced by the fact that Senate Bill 203 passed the House of Representatives by a vote of 106 to 1.

CONCLUSION

In conclusion, appellees respectfully submit that the Oklahoma unitization law and the particular order in respect to the West Cement Medrano Pool here under consideration constitute a reasonable and proper exercise of

the police power of the state and should be sustained in all respects by the judgment of this court.

HARRY D. PAGE,
BOOTH KELLOUGH,
Tulsa, Oklahoma,
Attorneys for Amerada Petroleum Corporation.

W. H. BROWN,
Oklahoma City, Oklahoma,
Attorney for Anderson-Prichard Oil Corporation.

GENTRY LEE,
F. H. BACON,
R. O. MASON,
Bartlesville, Oklahoma,
Attorneys for Cities Service Oil Company.

VILLARD MARTIN,
Tulsa, Oklahoma,
Attorney for Foster Petroleum Corporation.

ARCHIE D. GRAY,
WILLIAM C. LIEDTKE,
JAMES B. DIGGS, JR.,
Tulsa, Oklahoma,
Attorneys for Gulf Oil Corporation.

EARL A. BROWN,
Dallas, Texas,
ROBERT W. RICHARDS,
Oklahoma City, Oklahoma,
Attorneys for Magnolia Petroleum Company.

RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
Bartlesville, Oklahoma,
Attorneys for Phillips Petroleum Company.

V. P. CROWE,
Oklahoma City, Oklahoma,
Attorney for Stephens Petroleum Company, and Ray Stephens, Inc.

M. DARWIN KIRK,
Tulsa, Oklahoma,
Attorney for Sunray Oil Corporation.

FLOYD GREEN,
FERRILL H. ROGERS,
Oklahoma City, Oklahoma,
Attorneys for Corporation Commission of Oklahoma.

APPENDIX

APPENDIX "A"

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